THE SECURITY OF English-Mens Lives,

TRUST, POWER, and DUTY OF THE Grand Jurys OF ENGLAND.

Explained according to the Fundamentals of the *English* Government, and the Declarations of the same made in Parliament by many Statutes.

Published for the Prevention of Popish Designs against the Lives of many Protestant Lords and Commoners, who stand firm to the Religion and ancient Government of England.

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THE Principal Ends of all Civil Government, and of Humane Society, were the Security of Mens Lives, Liberties and Properties, mutual Aſſiſtance, and Help, each unto other, and Proviſion for their common Benefit and Advantage; and where the Fundamental Laws and Conſtitution of any Government have been wiſely adapted unto thoſe Ends, ſuch Countries and Kingdoms have increaſed in Virtue, Proweſs, Wealth and Happineſs, whil'ſt others through the want of ſuch excellent Conſtitutions, or neglect of preſerving them, have been a Prey to the Pride, Luſt and Cruelty of the moſt Potent, and the People have had no Aſſurance of Eſtates, Liberties or Lives, but from their Grace and Pleaſure, They have been many times forced to welter in each others Blood in their Maſters

quarrel for Dominion, and at beſt they have ſerved like Beaſts of Burden, and by continual baſe ſubſerviency to their Maſters Vices, have loſt all ſenſe of true Religion, Virtue and Manhood.

Our Anceſtors have been famous in their Generations for Wiſdom, Piety, and courage, in forming and preſerving a Body of Laws to ſecure themſelves and their Poſterities from Slavery and Oppreſſion, and to maintain their Native Freedoms; to be ſubject only to the Laws made by their own Conſent in their general Aſſemblies, and to be put in Execution chiefly by themſelves, their Officers and Aſſiſtants, to be guarded and defended from all Violence and Force, by their own Arms, kept in their own hands, and uſed at their own charge under their Princes Conduct; entruſting nevertheleſs an ample Power to their Kings, and other Magiſtrates, that they may do all the Good, and enjoy all the Happineſs that the largeſt Soul of man can honeſtly wiſh; and carefully providing

learning such

ſuch means of correcting and puniſhing their Miniſters and Councillors, if they tranſgreſſed the Laws, that they might not dare to abuſe or oppreſs the People, or deſign againſt their Freedom or Welfare.

This Body of Laws our Anceſtors always eſteemed the beſt Inheritance they could leave to their Poſterities, well knowing that theſe were the ſacred Fence of their Lives, Liberties, and Eſtates, and an unqueſtionable Title whereby they might call what they had their own, or ſay they were their own Men: The ineſtimable value of this Inheritance moved our Progenitors with great reſolution bravely from Age to Age to defend it; and it now falls to our Lot to preſerve it againſt the Dark Contrivances of a Popiſh Faction, who would by Frauds, Sham-Plots, and Infamous Perjuries, deprive us of our Birth-rights, and turn the points of our Swords (our Laws) into our own Bowels; they have impudently ſcandalized our Parliaments with Deſigns to over-

turn the Monarchy, because they would have excluded a Popish Successor, and provided for the Security of the Religion and Lives of all Protestants: They have caused Lords and Commoners to be for a long time kept in Prisons, and suborned Witnesses to swears matters of Treason against them; endeavouring thereby, not only to cut off some who had eminently appeared in Parliament for our antient Laws, but through them to blast the Repute of Parliaments themselves, and to lessen the Peoples Confidence in those great Bulwarks of their Religion and Government.

The present purpose is to shew how well our Worthy Fore-Fathers have provided in our Law for the safety of our Lives, not only against all attempts of open Violence, by the severe punishment of Robbers, Murtherers, and the like, but the secret poysonous Arrows that flie in the dark, to destroy the Innocent by false Accusation and Perjuries. Our Law-makers foresaw both their dangers from the Malice, and Passion,

that

that might cauſe ſome of private condition, to accuſe others falſly in the Courts of Juſtice, and the great hazards of Worthy and Eminent Mens Lives, from the Malice, Emulation, and Ill Deſigns of corrupt Miniſters of State, or otherwiſe potent, who might commit the moſt odious of Murders in the form and courſe of Juſtice; either by corrupting of Judges, as dependant upon them for their Honour and great Revenue, or by Bribing and Hiring men of depraved Principles, and deſperate Fortunes, to ſwear falſly againſt them; doubtleſs they had heard the Scriptures, and obſerved that the great men of the *Jews* ſought out many to ſwear Treaſon and Blaſphemy againſt Jeſus Chriſt: They had heard of *Ahab*'s Courtiers and Judges, who, in the Courſe, and Form of Juſtice, by falſe Witneſſes, murthered *Naboth*, *becauſe he would not ſubmit his Property to an Arbitrary Power*. Neither were they ignorant of the Antient *Roman* Hiſtories, and the peſtilent falſe Accuſers that abound-

ed in the Reign of ſome of thoſe Emperours, under whom the greateſt of crimes was to be virtuous. Therefore, as became good Legiſlators, they made as prudent Proviſion as perhaps any Country in the World enjoys, for equal and impartial Adminiſtration of Juſtice in all the concerns of the Peoples Lives; that every man, whether Lord or Commoner, might be in ſafety, whilſt they lived in due Obedience to the Laws.

For this purpoſe it is made a Fundamental in our Government, that (unleſs it be by Parliament, no mans Life ſhall be touched for any crime whatſoever, ſave by the Judgment of at leaſt 24 men; that is, 12 or more, to find the Bill of Indictment, whether he be Peer of the Realm, or Commoner, and 12 Peers, or above, if a Lord, if not 12 Commoners to give the Judgment upon the general Iſſue of not guilty joyned; of theſe 24 the firſt 12 are called the Grand Inqueſt,

See Ld *Cookes Inſtit.* 3d part, p. 40.

See *Mag. Chart. Cooke's* 2 part of *Inſtit.* p. 50, 51.

Inqueſt, or the Grand Jury, for the extent of their power, and in regard that their number muſt be more than 12, ſometimes 23, or 25, never were leſs than 13, Twelve whereof at leaſt muſt agree to every Indictment, or elſe 'tis no legal Verdict; If 11 of 21, or of 13, ſhould agree to find a Bill of Indictment, it were no Verdict. The other Twelve, in Commoners Caſes, are called the Petit-Jury, and their number is ever Twelve; but the Jury for a Peer of the Realm may be more in number, though of like Authority. The Office and Power of theſe Juries is *Judicial*, they only are the Judges from whoſe Sentence the Indicted are to expect Life or Death: upon their Integrity and Underſtanding, the Lives of all that are brought into Judgment do ultimately depend; from their Verdict there lies no Appeal, by finding Guilty or not Guilty; they do complicately Reſolve both Law, and Fact.

As it hath been the Law, ſo it hath allways been the Cuſtom, and Practice

of

of these Juries, upon all general Issues, pleaded in Cases Civil as well as Criminal, to judge both of the Law and Fact: So it is said in the Report of the Lord Chief Justice *Vaughan*, in *Bushel's* Case, that these Juries determine the Law in all matters where Issue is joyned and tried, in the Principal Case whether the Issue be about Trespass or a Debt, or Disseizin in Assizes, or a Tort, or any such like, unless they should please to give a special Verdict, with an implicite faith in the Judgment of the Court, to which none can oblige them against their Wills.

See the *Reports* of the Lord Chief-Justice *Vaughan*, p. 150, 151.

These last 12 must be Men of equal condition with the Party Indicted, and are called his Peers, therefore if it be a Peer of the Realm, they must be all such, when Indicted at the Suit of the King; and in the case of Commoners, every Man of the 12 must agree to the Verdict, freely, without compulsion, fear, or menace, else it is no Verdict. Whether the case of

a Peer

a Peer be harder, I will not determine. Our Anceſtors were careful that all men of the like condition, and quality, preſumed to be ſenſible of each others infirmity, ſhould mutually be Judges each of others lives, and alternately taſt of Subjection and Rule; every man being equally liable to be Accuſed, or Indicted, and perhaps to be ſuddenly judged by the Party, of whom he is at preſent Judge, if he be found innocent. Whether it be Lord or Commoner that is Indicted, the Law intends (as near as may be) that his equals that Judge him, ſhould be his Companions, known to him, & he to them, or at leaſt his Neighbours, or Dwellers near about the place where the Crime is ſuppoſed to have been committed, to whom ſomething of the Fact muſt probably be known; and though the Lords are not appointed to be of the Neighbourhood to the Indicted Lord, yet the Law ſuppoſes them to be Companions, & perſonally well known each unto other, being preſumed to be a ſmall number (as they have anciently been)

and

and to have met yearly, or oftner in Parliament, as by Law they ought, besides their other meetings, as the hereditary Councillers of the Kings of *England*. If time hath altered the case of the Lords as to the number, Indifferency, and impartiality of the Peers, it hath been, and may be worthy of the Parliaments consideration, & the greater duty is incumbent upon Grand Juries to examine with the utmost diligence the Evidence against Peers, before they find a Bill of Indictment against any of them, if in truth it may put their Lives in greater danger.

It is not designed at this time to undertake a discourse of Petit-Juries, but to consider the Nature & Power of Grand Inquests, and to shew how much the Reputation, the Fortunes, and the Lives of *English* Men depend upon the Conscientious performance of their Duty.

It was absolutely necessary for the support of the Government, and the safety of every Mans life and interest, that some should be trusted to inquire after all such as by Treasons, Felonies, or

lesser

leſſer Crimes, diſturbed the peace, that they might be proſecuted, and brought to condign puniſhment; and it was no leſs needful for every mans quiet and ſafety, that the truſt of ſuch inquiſitions ſhould be put into the hands of Perſons of underſtanding, and integrity, indifferent, and impartial, that might ſuffer no man to be falſely accuſed, or defamed, nor the lives of any to be put in jeopardy, by the malicious conſpiracies of great or ſmall, or the Perjuries of any profligate wretches: For theſe neceſſary, honeſt ends was the inſtitution of Grand Juries.

Our Anceſtors thought it not beſt to truſt this great concern of their Lives & Intereſts in the Hands of any Officer of the King's, or in any Judges named by him, nor in any certain number of men during life, leſt they ſhould be awed or influenced by great men, corrupted by bribes, flatteries, or love of power, or become negligent, or partial to Friends & Relations, or purſue their own Quarrels or private Revenges, or connive at the

the Conſpiracies of others, and indict thereupon. But this truſt of enquiring our, and Indicting all the Criminals in a County, is placed in men of the ſame County, more at leaſt than Twelve of the moſt honeſt, and moſt ſufficient for Knowledge, and Ability of Mind and Eſtate, to be from time to time at the Seſſions and Aſſizes, and all other Commiſſions of Oyer and Terminer, named and returned by the chief Sworn Officer of the County, the Sheriff, (who was alſo by expreſs Law anciently choſen annually by the people of every County) & truſted with the Execution of all Writs and Proceſſes of the Law, and with the power of the County to ſuppreſs all Violences, unlawful Routs, Riots, and Rebellions. Yet our Laws left not the Election of theſe Grand Inqueſts abſolutely to the Will of the Sheriffs, but have deſcribed in general their Qualifications, who ſhall Enquire & Indict either Lord or Commoner: They ought, by the old common Law, to be lawful Liedge people, of ripe Age, not over aged or infirm,

firm, and of good Fame amongſt their Neighbours, free from all reaſonable ſuſpicion of any deſign for himſelf or others upon the Eſtates or Lives of any ſuſpected Criminals, or Quarrel, or Controverſie with any of them: They ought to be indifferent and impartial, even before they are admitted to be ſworn, & of ſufficient Underſtanding and Eſtate for ſo great a Truſt. The ancient Law-Book, called, *Briton*, of great Authority, ſays, The Sheriffs, Bailiffs ought to be ſworn to return ſuch as know beſt how to enquire, and diſcover all breaches of the Peace; and leſt any ſhould intrude themſelves, or be obtruded by others, they ought to be returned by the Sheriff, without the Denomination of any, except the Sheriffs Officers. And agreeable here. unto was the Statute of 11 *H.* 4. in theſe words. ‘ *Item*, ‘ Becauſe of late Inqueſts were taken at ‘ *Weſtminſter* of perſons named to the ‘ Juſtices, without due Return of the ‘ Sheriff, of which perſons ſome were ‘outlawed,

See *Brit.* p. 9. and 10.

See 11 *Hen.* 4.

'outlawed, &c. and some fled to Sanctu-
'ary for Treason and Felony, &c. by
'whom, as well many Offenders were
'indicted, as other lawful Liedge people
'of the King not guilty, by Conspiracy,
'Abetment, and false Imagination of o-
'thers, &c. against the course of the
'common Law, &c. It is therefore grant-
'ed, for the Ease and Quietness of the
'People, that the same Indictment, with
'all its Dependances, be void, and holden
'for none for ever; and that from hence-
'forth, no Indictment be made by any
'such persons, but by Inquest of the
'King's Liedge People, in the manner as
'was used, &c. returned by the Sheriffs,
'&c. without any denomination to the
'Sheriffs, &c. according to the Law of
'*England*, & if any Indictment be made
'hereafter in any point to
'the contrary, the same be
'also void, and holden for
'none for ever. See also the

See Cook's *Instit.* 3d part, fol. 33.

Statute of *Westm.* 2d cap. 38. and *Articul super Cartas*, ch. 9.

So careful have our Parliaments been,

that

that the Power of Grand Inqueſts might be placed in the hands of good & worthy men; that if one man of a Grand Inqueſt, though they be Twenty Three or more, ſhould not be *Liber & Legalis Homo*, or ſuch as The Law requires, and duly returned without denomination to the Sheriff; all the Indictments found by ſuch a Grand Jury, and the proceedings upon them, are void and null. So it was adjudged in *Scarlet's* caſe.

I know too well, that the Wiſdom & Care of our Anceſtors, in this Inſtitution of Grand Juries, hath not been of late conſidered as it ought; nor the Laws concerning them duly obſerved; nor have the Gentlemen and other men of Eſtates, in the ſeveral Counties, diſcerned how inſenſibly their legal Power and Juriſdiction in their Grand & Petit Juries is decayed, & much of the means to preſerve their own Lives and Intereſts, taken out of their hands. 'Tis a wonder that they were not more awakened with the attempt of the late L. Ch. Juſtice *K.* who would have uſurp-

ed a Lordly Dictatorian power over the Grand Jury of *Somersetshire*, and commanded them to find a Bill of Indictment for Murther, for which they saw no Evidence, and upon their refusal, he not only threatned the Jury, but assumed to himself an Arbitrary Power to fine them.

Here was a bold Battery made upon the ancient Fence of our Reputations, and Lives: If that Justice's Will had passed for Law, all the Gentlemen of the Grand Juries must have been the basest Vassals to the Judges, & have been penally obliged, *Jurare in Verba Magistri*, to have sworn to the Directions or Dictates of the Judges: But thanks be to God, the late long Parliament (though filled with Pensioners) could not bear such a bold Invasion of the *English* Liberty; but upon the Complaint of one Sir *Hugh Windham*, Foreman of the said Jury, and a Member of that Parliament, the Commons brought the then Chief Justice to their Bar, to acknowledge his fault, whereupon the Prosecution ceased.

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The Truſt and Power of Grand Juries is, and ought to be accounted amongſt the greateſt, and of moſt concern, next to the Legiſlative. The juſtice of the whole Kingdom, in criminal Caſes, almoſt wholly depending upon their Ability and Integrity, in the due Execution of their Office; Beſides, the Concernments of all Commoners, the Honour, Reputation, Eſtates, and Lives of all the Nobility of *England*, are ſo far ſubmitted to their Cenſure, that they may bring them into queſtion for Treaſon, or Felony, at their Diſcretion; Their Verdict muſt be entred upon Record, againſt the greateſt Lords, and proceſs muſt legally go out againſt them thereupon, to impriſon them if they can be taken, or to outlaw them, as the Statutes direct; and if any Peer of the Realm, though innocent, ſhould juſtly fear a Conſpiracy againſt his Life, & think fit to withdraw, the direction of the Statutes, in proceeding to the Outlawry, being rightly purſued, he could never reverſe the Outlawry, as the Law now ſtands, ſave by Par-

don, or Act of Parliament. Hence it appears, that in case a Grand Jury should be drawn to Indict a Noble Peer unjustly either by means of their own weakness, or partiality, or a blind submission to the Direction or Opinion of Judges: One such failure of a Jury, may occasion the Ruine of any of the best or greatest Families in *England*: I mention this extent of the Grand Juries Power over all the Nobility, only to shew their joint Interest and Concern with the Commons of *England* in this ancient Institution.

The Grand Juries are trusted to be the principal means of preserving the Peace of the whole Kingdom, by the terrour of executing the penal Laws against Offenders, by their Wisdom, Diligence, & Faithfulness in making due Inquiries after all Breaches of the Peace, and bringing every one to answer for his crime, at the peril of his Life, Limb, and Estate; that every man, who lives within the Law, may sleep securely in his own House.

'Tis commited to their Charge and Trust

Truſt, to take care of bringing Capital Offenders to pay their Lives to Juſtice, and leſſer Criminals to other puniſhments, according to their ſeveral demerits. The Courts, or Judges, or Commiſſioners of Oyer and Terminer, & of Gaol-Delivery, are to receive only from the Grand Inqueſt, all Capital matters whatſoever, to be put in Iſſue, tried and judged before them by the Petit Juries. The whole Stream of Juſtice, in ſuch caſes, either runs freely, or is ſtopped and diſturbed as the Grand Inqueſts do their Duties, either faithfully and prudently, or neglect or omit them.

And as one part of their Duty is to Indict Offenders, ſo another part is to protect the Innocent, in their Reputations, Lives and Intreſts, from falſe Accuſers, and malicious Conſpirators: They are to ſearch out the Truth of ſuch Informations as come before them, and to reject the Indictment if it be not ſufficiently proved, and farther, if they have reaſonable ſuſpicion of Malice, or wicked Deſigns againſt any mans Life or Eſtate by

ſuch as offer a Bill of Indictment; the Laws of God and of the Kingdom bind them to uſe all poſſible means to diſcover the Villany; & if it appear to them (whereof they are the legal Judges) to be a Conſpiracy, or malicious Combination againſt the Accuſed, they are bound by the higheſt Obligations upon Men and Chriſtians, not only to reject ſuch a Bill of Indictment, but to Indict forthwith all the Conſpirators with their Abettors and Aſſociates.

Doubtleſs there hath been Pride and Covetouſneſs, Malice and deſire of Revenge in All Ages, from whence have ſprung falſe Accuſations and Conſpiracies; but no Age before us ever hatched ſuch villanies, as our Popiſh Faction have contrived againſt our Religion, Lives, & Liberties. No Hiſtory affords an Example of ſuch Forgeries, Perjuries, Subornations, and Combinations of infamous Wretches, as have been lately diſcovered amongſt them, to defame Loyal, Innocent Proteſtants and to ſhed their guiltleſs Blood in the Form and Courſe of Juſtice,

ſtice, and to make the Kings moſt faithful Subjects appear to be the vileſt Traitors unto him. In this our miſerable State, Grand Juries are our only ſecurity, in as much as our Lives cannot be drawn into jeopardy, by all the malicious crafts of the Devil, unleſs ſuch a number of our honeſt Country Men ſhall be ſatisfied in the truth of the Accuſations. For prevention of ſuch Plotters of wickedneſs as now abound, was that Statute made in the 42 of *E.* 33. in the words: 'To eſchew the miſchiefs & damage done to 'divers of the Commons by *Falſe Accuſers* which oftentimes have made the 'Accuſations more for Revenge & ſingular Benefit, than for the profit of the 'King, or of his People; which accuſed 'perſons, ſome have been taken, and 'ſometimes cauſed to come before the 'King's Council by Writ, & otherwiſe, 'upon grievous pain, againſt the Law; 'It is aſſented & accorded for the good 'Government of the Commons, That 'no man be put to anſwer without pre-

See the Stat. 42 *E.* 3. 3.

'ſentment before Juſtices, or matter of 'Record, &c. according to the old Law of 'the Land, and if any thing be done to 'the contrary, it ſhall be void in Law, '&c. And (ſaith the Statute of the 25 of *E.* 3. 4.) 'None ſhall be taken by Pe-'tition, or Suggeſtion made to the King 'or to his Council, unleſs it be by *In-'dictment*, or *Preſentment* of good and 'lawful People of the ſame *Neighbour-'hood* where ſuch deeds be done, &c. That is to ſay, by a Grand Jury.

All our Lives are thus by Law truſted to the Care of our Grand Inqueſts, that none may be put to anſwer for their lives, unleſs they Indict them. If a cauſleſs Indictment of any man ſhould careleſly paſs from them, his guiltleſs Blood, or what Prejudice ſoever the Accuſed ſhould thereby ſuffer muſt reſt upon them, who by breach of their Truſt were the occaſions of it; their fault cannot be excuſed by the proſecution of an Attorney, or Solicitor General, or any other Accuſer, if it were in their power to be more truly informed in the Caſe.

Whoſoever

Whosoever prevents not an Evil when he may, consents to it.

Now to oblige these Juries to the more conscientious care, to Indict all that shall appear to them Criminals, and to save every Innocent, if it may be, from unjust Vexation, and danger, by Malice and Conspiracy, our Ancestors appointed an Oath to be imposed upon them, which cannot be altered, except by Act of Parliament: Therefore every Grand Jury Man is sworn, as the Foreman, in the words following, *viz.*

You shall diligently enquire, and true Presentment make of all such Articles, matters and things as shall be given you in charge: And of all other matters and things as shall come to your own knowledge, touching this present service. The Kings Council, your Fellows, and your own, you shall keep secret: You shall present no person for Hatred or Malice; neither shall you leave any one unpresented for Favour, or Affection, for Love, or Gain, or any hopes thereof; but in all things you shall present the Truth, the

whole

whole Truth, and nothing but the Truth to the beſt of your knowledge; ſo help you God. The Tenor of the Oath is plain, ſaying in theſe words, *All ſuch matters and things as ſhall be given you in charge:* But whenſoever a general Commiſſion of Oyer and Terminer is Iſſued, all Capital Offences are alwaies the principal matters given in charge to the Grand Jury, which is enough for the preſent diſcourſe of their duty: Hence then it evidently appears, that every Grand Jury is bound to enquire diligently after the Truth of every thing, for which they ſhall Indict or Preſent any Man: They are not only bound by the Eternal Law of loving their Neighbour, to be as tender of the Life and good Name of every man, as of their own, and therefore to take heed to the Truth in Accuſing or Indicting any man; but their expreſs Oath binds them to be diligent in their Enquiries, that is, to receive no ſuggeſtion of any Crime for Truth, without examining all the Circumſtances about it, that fal within their knowledge;

knowledge; they ought to consider the first Informers, and enquire as far as they can into their Aims and Pretences in their prosecutions; if Revenge or Gain should appear to be their ends, there ought to be the greater suspition of the Truth of their Accusations; the Law intending all Indictments to be for the benefit of the King and of his People, as appears by the Stat. of 42 *E.* 3. 3. Next the Jury are bound to enquire into the matters themselves, whereof any man is accused, as to the time, place and all other circumstances of the Fact alledged. There have been false Informers that have suggested things impossible; for instance, That Thirty Thousand Men in Arms were kept in readiness for an Exploit, in a secret place, as if they could have been hid in a Chamber, or a Cabinet. The Jury ought also to enquire after the Witnesses, their condition and quality, their fame and reputation, their means of subsistence, and the occasion whereby the Facts whereof they bear witness came to their knowledge.

ledge. Sometimes persons of debauched lives and low condition, have deposed Discourses, and Treasonable Councils against Persons of Honour and Virtue, so unlikely to come to their Knowledge, (if such things had been) that their pretence of being privy to them, was a strong Evidence that their whole story was false and feigned. It is also agreeable unto our ancient Law and Practice, and of great Consequence in cases of Treason or Felony, that the Jury enquire after the time, when first the matters deposed came to the Witnesses knowledge, and whether they pursued the directions of the Law in the immediate Discovery and pursuit of the Traitor or Felon, by Hue & Cry, or otherwise, or how long they concealed the same; their Testimony being of little or no value, if they have made themselves partakers of the Crime by their voluntary Concealment.

Neither may the Jury lawfully omit to enquire concerning the Parties Accused, of their Quality, Reputation, and

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the manner of their Converſation, with many other circumſtances; from whence they may be greatly helped to make right Inferences of the Falſhood, or Truth of the Crimes whereof any man ſhall be accuſed. The Jury ought to be ignorant of nothing whereof they can enquire, or be informed, that may in their underſtandings enable them to make a true Preſentment or Indictment of the matters before them.

When a Grand Jury is ſworn to enquire diligently after all Treaſons, &c. 'tis natural & neceſſary to their buſineſs, to think of whom they ſhould enquire; and 'tis plainly and eaſily reſolved, that they ought to enquire of every man that can or will inform them; and if any kind of Treaſon be ſuggeſted to them, to have been done by any man or number of men, their duty is the ſame in that particular, as it was in the general; that is, to ſeek diligently to find the truth. 'Tis certainly inconſiſtent with their Oaths, to ſhut their Ears againſt any lawful man that can tell them any thing relating unto

unto a crime in question before them: No man will believe, nor can they themselves think that they desire to find and present the truth of a fact, if they shall refuse to hear any man, who shall pretend such knowledge of it, or such material Circumstances, as may be useful to discover it; whether that which shall be said by the pretenders will answer the Juries expectations, must rest in their Judgments, when they have heard them. It seems therefore from the words of the Oath, that there is no bound or limit set (save their own understanding or Conscience) to restrain them to any number or sort of persons of whom they are bound to enquire; they ought first & principally to enquire of one another mutually, what knowledge each of them hath of any matters in question before them; the Law presumes that some at least of so many sufficient men of a County, must know or have heard of all notable things done there against the publick peace; for that end the Juries are by the Law to be of the Neighborhood to the

place

place where the crimes are committed. If the parties, and the facts whereof they are accused be known to the Jury, or any of them, their own knowledge will supply the room of many Witnesses. Next they ought to inquire of all such witnesses as the Prosecutors will produce against the Accused, they are bound to examine all fully & prudently to the best of their skill; every Jury Man ought to ask such questions (by the Fore-man at least) as he think necessary to resolve any doubt that may arise in him, either about the fact, or the Witnesses, or otherwise; if the Jury be then doubtful, they ought to receive all such further Testimony as shall be offered them, and to send for such as any of them do think able to give Testimony in the case depending.

If it be asked how or in what manner, the Juries shall enquire; the answer is ready, according to the best of their understandings. They only, not the Judges are sworn to search diligently to find out all Treasons, &c. within their charge, & they must and ought to use their own discretion

cretion in the way and manner of their Enquiry: No directions can legally be impoſed upon them by any Court or Judges; An honeſt Jury will thankfully accept good Advice from Judges, as they are Aſſiſtants; but they are bound by their Oaths to preſent the Truth, the whole Truth, and nothing but the Truth, to the beſt of their own, not the Judges, knowledge: Neither can they, without breach of that Oath, reſign their Conſciences, or blindly ſubmit to the dictates of others; and therefore ought to receive, or reject ſuch Advices, as they judge them good or bad.

If the Jury ſuſpect a Combination of Witneſſes againſt any mans Life, (which perhaps the Judges do not diſcern) and think it needful to examine them privately and ſeparately, the diſcretion of the Juries in ſuch a caſe, is their only beſt, and lawful guide, though the example of all Ages and Countries, in examining ſuſpected Witneſſes privately and ſeparately, may be a good direction to them.

Nothing

Nothing can be more plain and expreſs, than the words of the Oath are to this purpoſe. The Jurors need not ſearch the Law Books, nor tumble over heaps of old Records for the explanation of them. Our greateſt Lawyers may from hence learn more certainly our ancient Law in this caſe, than from all the Books in their Studies. The Language wherein the Oath is penned, is known and underſtood by every man, and the words in it have the ſame ſignification, as they have whereſoever elſe they are uſed. The Judges (without aſſuming to themſelves a Legiſlative Power) cannot put a new ſenſe upon them, other than according to their genuine, common meaning. They cannot Magiſterially impoſe their Opinions upon the Jury, and make them forſake the direct words of their Oath, to purſue their gloſſes. The Grand Inqueſt are bound to obſerve alike ſtrictly every part of their Oath; and to uſe all juſt and proper ways which may enable them fully to perform it; otherwiſe it were to ſay, that after men had ſworn

to enquire diligently after the Truth, according to the beſt of their Knowledge, they were bound to forſake all the natural and proper means which their Underſtandings ſuggeſt for the Diſcovery of it, if it be commanded by the Judges,

And therefore if they are jealous of a combination of the witneſſes, or that corruption & Subornation hath been made uſe of, they cannot be reſtrained from asking all ſuch Queſtions, as may conduce to the ſifting out of the Truth, nor from examining the Witneſſes privately and ſeparately; leſt (as *Forteſcue* ſays) The ſaying of one ſhould provoke or Inſtruct others to ſay the like.

Fort. D. Laud. Leg. Ang. cap. 26.

Nor are the Jury tied up to enquire only of ſuch Crimes as the Judges ſhall think fit to give them directly in charge, much leſs of ſuch Bills only as ſhall be offered to them; but their Enquiry ought to extend to *All other Matters & Things which ſhall come to their Knowledge, touching the preſent Service.* If they have ground to ſuſpect that any Accuſation

before

before them proceeds from a Conſpiracy, they are obliged by their Oaths to turn the Enquiry that way, and if they find cauſe, not only to Reject the Bills offered upon ſuch Teſtimonies, but to indict ſuch Witneſſes, and all the Abettors of their Villany.

They are carefully to examin what ſort of men the Witneſſes are; for 'tis a Rule in all Laws, That *Turpes à Tribunalibus arcentur*, Vile Perſons ought to be rejected by Courts of Juſtice. Such Witneſſes would deſtroy Juſtice inſtead of promoting it. And the Grand Jury are to take care of admitting ſuch: They may and ought (if they have no certain knowledge of them) to ask the Witneſſes themſelves of their Condition, and way of living, and all other Queſtions, which may beſt inform them what ſort of men they are. 'Tis true, it may be lawful for the Witneſſes, in many caſes, to refuſe to give anſwer to ſome demands which the Jury may make; as where it would be to accuſe themſelves of Crimes: but yet that very refuſal, or avoiding to give di-

rect Anſwers, may be of great uſe to the Jury, whoſe only buſineſs is to find out the Truth; and who will be in a good meaſure enabled to judge of the Credit of ſuch Witneſſes, as dare not clear themſelves of Crimes, which common Fame, or the knowledge of ſome of the Grand Inqueſt has charged them with?

If the Witneſſes which come before the Grand Jury upon an Indictment for Treaſon, ſhould diſcover upon their examination, that they Concealed it a long time without juſt Impediment; The preſumption of Law will be ſtrong againſt them, that no ſenſe of honeſty or of their duty brought them at laſt to reveal it.

It appears by *Bracton*, that ancient Writer of our Laws, that in Caſes of Treaſon the Juries were in his days adviſed (as now they ought) to be ſo ſevere in their Enquiry within what time the Witneſſes diſcovered the Traſon after it came to their knowledge:

Brac. l. 3 c. 3. *Non merari debet, &c. nec debet ad aliqua negotia, quamvis urgen-*

knowledge: That if it were not evident that they revealed it with as much expedition as was well poſſible for them, they were not by Law to be heard as Witneſſes; It was ſcarce permitted them (ſaith he) *to look back* in their going; ſuch ought to be their ſpeed to make known the Treaſon. Or if in any caſe they be otherwiſe openly flagitious, though they be not legally infamous, or if they are men of deſperate Fortunes, ſo that the temptation of want is manifeſtly ſtrong upon them, and the reſtraint of Conſcience can be ſuppoſed to be little or none at all; whatever they ſay is (at leaſt) to be heard with extraordinary caution, if not totally rejected. In *Scotland* ſuch a degree of Poverty, that a Witneſs cannot ſwear himſelf to be worth Ten pounds, is ſufficient to lay him aſide wholly in theſe high Concernments of Criminal Caſes: And in ſome other Kingdoms

tiſſima, ſe convertere, quia vix permittitur ei quod retro aſpiciat, &c. Si poſt intervallum accuſare velit, non erit de Jure audiendus.

S. G. Mackenzy, Crim. Law, lib. 26. 3.

to be a looſe liver is an Objection of the ſame force, againſt any produced for Witneſſes.

And for the better diſcovery of the Truth of any fact in queſtion, the Credit of the Witneſſes, and the value of the Teſtimonies; it is the Duty of the Grand Inqueſt to be well informed concerning the Parties indicted; of their uſual Reſidence, their Eſtates and manner of living, their Companions and Friends, with whom they are accuſtomed to converſe, ſuch knowledge being neceſſary to make a good judgment upon moſt accuſations; but moſt of all in ſuſpitions, or Indictments of ſecret Treaſons, or Treaſonable Words where the accuſers can be of no credit, if it be altogether incredible that ſuch things as they teſtifie ſhould come to their knowledge.

Sometimes the quality of the accuſed perſon may ſet him at ſuch a diſtance from the Witneſſes, that he cannot be ſuppoſed to have converſed with them familiarly, if his Wiſdom and Conduct has

has been always such, that it is not credible he would trust men so inconsiderable, or meer strangers to him, and such as are wholly uncapable to assist in the Design which they pretend to discover.

Can the Grand Inquest believe such Testimony to be of any value? Or can they avoid suspecting Malice, Combination, and Subornation in such a case? or can they shew themselves to be just, and conscientious in their Duty, if they do not suspend their Verdict until further Enquiry, and write *Ignoramus* upon the Bill?

It is undoubtedly Law which we find reported in *Stiles*, That

Though there be Witnesses who prove the Bill, yet the Grand Inquest is not bound to find it, if they see cause to the contrary. *Stiles, Report* 11.

Now to make their Enquiry more instrumental and advantageous to the Execution of Justice, they are enjoined by their Oath to keep secret *the King's Counsel, their fellows, and their own.*

Perhaps 'tis not ſufficiently underſtood or conſidered, what duty is enjoyned to every man of a Grand Inqueſt by this clauſe of their Oath, being ſeldom (if ever) explained to them in the general charge of the Judges at Seſſions or Aſſiſes: But it is neceſſary that they ſhould apprehend what Council of the King is truſted with them. Certainly there is or ought to be much more of it communicated to them, than is commonly thought, and in things of the greateſt conſequence. To them ought to be committed in the ſeveral Counties where any Proſecutions are begun, the firſt Informations and ſuſpitions of all Treaſons, Murders, Felonies, Conſpiracies, and other Crimes, which may ſubvert the Government, endanger, or hurt the King, or deſtroy the Lives or Eſtates of the innocent People, or any way diſquiet or diſtrub the common Peace. Our Law intends the Councils of the King to be continually upon the protection and ſecurity of the People, and prevention of all their miſchiefs

and

and dangers by wicked, lawleſs, and injurious men. And in order thereunto to be adviſing how to right his wronged Subjects in general, if the publick ſafety be hazarded by Treaſons of any kind; or their Relations ſnatcht from them by Murderers, or any way deſtroyed by malicious Conſpirators in form of Law; or their Eſtates taken away by Robbery and Thieves, or the Peace broken. And for theſe ends to bring to exemplary Juſtice all offenders, to deter others from the like Wickedneſs, And untill theſe Counſels of the King come to the Grand Jury, he can bring no ſuch Criminals to judgment, or to anſwer to the Accuſations and Suggeſtions againſt them. Hence it becomes unavoidably neceſſary to reveal to the Grand Juries all that hath been diſcovered to the King or any of his Miniſters, Judges, or Juſtices, concerning any Treaſons, or other Offences, whereof any man is accuſed. And where ſuſpition hath cauſed any to be impriſoned, all the grounds of their ſuſpitions ought

to

to be opened, concerning the Principals and the Acceſſories, as well before as after the fact, all the circumſtances and preſumptions that may enduce a belief of their Guilt, and all notices whatſoever, which may enable the Jury to make a more exact and effectual Enquiry, and to preſent the whole Truth. They themſelves will not only be offenders againſt God by reaſon of their Oath, but ſubject to legal puniſhments, if they knowingly conceal any Criminals, and leave them unpreſented; and none can be innocent, who ſhall conceal from them any thing that may help and aſſiſt them in their Duty.

The firſt notices of Crimes or ſuſpicions of the Criminals by whomſoever brought in, and the intentions of ſearching them out, and proſecuting them legally, are called the King's Counſel, becauſe the principal care of executing Juſtice is entruſted to him, and they are to be proſecuted at his Suit, and in his name; and ſuch proceedings are called Pleas of the Crown. From hence

may

may be eaſily concluded, that the Kings Counſel, which by the Oath of the Grand Inqueſt is to be kept ſecret, includeth all the perſons offered to them to be indicted, and all the matters brought in Evidence before them, all circumſtances whatſoever whereof they are informed, which may any way conduce to the diſcovery of Offences; all intimations given them of Abbettors and Encouragers of Treaſons, Felonies, or Perjuries and Conſpiracies, or of the Receivers, Harbourers, Nouriſhers, and Concealers of ſuch Criminals.

Likewiſe the Oath which enjoins the Council of their Fellows, and their own to be kept, implies that they ſhall not reveal any of their perſonal knowledge concerning Offences or Offenders; nor their intentions to indict any man thereupon; nor any of the Propoſals and Advices amongſt them of ways to enquire into the truth of any matter before them, either about the Crimes themſelves, or the accuſers and Witneſſes, or the party accuſed, nor the debates

debates thereupon amongſt themſelves not the diverſity of opinions in any caſe before them.

Certainly this Duty of ſecreſie concerning the Kings Counſel was impoſed upon the Grand Inqueſt with great reaſon, in order to the publick good. It was intended that they ſhould have all the advantages which the ſeveral caſes will afford, to make effectual Enquiries after Criminals to offer them to Juſtice. If packs of Thieves, private Murderers, ſecret Traitors, or Conſpirators and Suborners, can get Intelligence of all that is known of their Villanies, all the parties concerned may conſult together, how to hide their crimes, and prevent ſuch further Enquiries as can be made after them; they may form Sham-Stories by agreement, that may have appearance of truth to miſlead and delude the Jury in their Examination, and avoid contradicting each other; they may remove or conceal all ſuch things as might occaſion a fuller Diſcovery of their Crimes, or become circumſtan-

tial

ial Evidences againſt any of their Aſſo-
iates, if one or more of them be known
r taken, or is to be indicted. There
ath been Confederates in high Crimes,
who have ſecured themſelves from the
uſtice done upon ſome of their Compa-
ions, by their confident appearance
nd denial of the Fact, having been em-
oldened therein from their knowledge
of all the grounds of ſuſpition, and all
he Witneſſes examined about them and
he matter of their Teſtimonies. 'Tis
oo well known what helps of diſcover-
ing the whole Popiſh Plot were loſt
through the want of keeping ſecret the
Kings Counſel therein, before the mat-
er was brought either to the Parlia-
ment, or to any Grand Inqueſt; and
hereby they were diſabled for the ef-
fectual Execution of their Offices, and
could never ſearch into the Bowels of
hat dangerous Treaſon in any County.
But our Law having placed this great
truſt of Enquiry in the prudence and
faithfulneſs of the Grand Inqueſt, was
careful that they might not diſable

themſeves

ſelves for their own truſt, by the indiſcretion or worſer fault of any of their own number, in revealing the Kings Counſel or their own.

And as it was intended hereby to preſerve unto them all reaſonable helps for their bringing to light the hidden miſchiefs that might diſturb the common Peace, ſo it was neceſſary to prevent the Flight of Criminals; if the Evidence againſt one that is accuſed ſhould be publickly known, whether it ſhould be ſufficient for an Indictment of him, and how far it extends to others; his Confederates and Accomplices might eaſily have notice of their danger, and take opportunity to eſcape from Juſtice.

Yet the reaſon will be ſtill more manifeſt for keeping ſecret the accuſations and the Evidence by the Grand Inqueſt, if it be well conſidered, how uſeful and neceſſary it is for diſcovering truth in the Examinations of Witneſſes in many, if not in moſt caſes that may come before them; when if by this Privacy Witneſſes may be examined in ſuch manner

and

and Order, as prudence and occaſion direct; and no one of them be ſuffered to know who hath been examined before him, nor what queſtions have been asked him, nor what anſwers he hath given, it may probably be found out whether a Witneſs hath been biaſſed in his Teſtimony by malice or Revenge, or the fear or favour of men in Power, or the love or hopes of Lucre and gain in preſent or future, or Promiſes of impunity for ſome enormous Crime.

The ſimplicity of Truth in a Witneſs may appear by the natural plainneſs, eaſineſs, and directneſs of his Anſwers to what ſoever is propounded to him, by the equality of this Temper, and ſuitableneſs of his Anſwers to queſtions of ſeveral kinds, and perhaps to ſome that may be asked for Trial ſake only of his uprightneſs in other matters. And the Falſeneſs, Malice or ill Deſign of another, may be juſtly ſuſpected from his ſtudiouſneſs and difficulty in anſwering, his Artifice and cunning in what he relates, not agreeable to his way of breed-

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ing and parts, his reſerved, indirect, and evaſive Replies to eaſie Queſtions, his pretences of doubtfulneſs and want of remembring things of ſuch ſhort dates or ſuch Notoriety, that 'tis not credible he could be ignorant or forgetful of them. In this manner the Truth may be evidenced to the ſatisfaction of the Jurors Conſciences, by the very demeanor of the Witneſſes in their private Examinations, in as much as the greateſt certainty doth often ariſe from the careful obſervation and comparing of ſuch minute matters; of which a diſtinct account is not poſſible to be given to a Court: And for that Reaſon (among others) the Juries are made the only abſolute Judges of their Evidence.

Yet further, their private Examinations may diſcover truth out of ſome diſagreement of the Witneſſes, when ſeparately interrogated, and every of the Grand Inqueſt ask them Queſtions for his own ſatisfaction about the matters which have come to his particular knowledge,

ledge, and this freely without Awe or Controul of Judges, or diſtruſt of his own parts, or fear to be checked for asking impertinent queſtions.

Conſpiracies againſt the lives of the Innocent in a form of Juſtice, have been frequently detected by ſuch ſecret and ſeparate Examination of Witneſſes. The Story of *Suſanna* is famous; that two of their Elders and Judges of great Credit & Authority, teſtified in the open Aſſembly a malicious Invention againſt her, with all the ſolemnity uſed in capital Caſes, and Sentences of Death paſſed upon her, and was ready to be executed, had not wiſe *Daniel* cryed out in her behalf: *Are ye ſuch Fools, O Iſraelites, that without Examination or Knowledge of the Truth, ye have condemned a Daughter of* Iſrael? *Return* (ſaid he) *again to Judgment, and put theſe two one far from another, and I will examine them:* And being asked ſeparately (though in publick,

Note that the Teſtimony given in the Aſſembly without ſeparating the Witneſſes, & trying the Truth by circumſtances, was eſteemed

no Examination or knowledg of the Truth.

the Teſtimony having been ſo given before) concerning the place of the Fact then in queſtion, they had not agreed upon that Circumſtance as they had upon their Story; and ſo their falſhood became manifeſt, one ſaying the Adultery was committed under a Lentisk Tree, the other, it was under a Pine Tree: And upon that conviction of the falſe Witneſſes, the whole Aſſembly cried with a loud voice, and praiſed God. Theſe falſe Witneſſes were put to Death as their Law required.

We have alſo a late inſtance of the uſefulneſs of private and ſeparate Examinations, in the Caſe of the Lord *Howard*, againſt whom the Attorney General proſecuted an Accuſation of Treaſon, the laſt Midſummer Term, before the Grand Inqueſt for *Middleſex*. Mrs. *Fitz Harris*, and *Tereſa Peacock* her Maid, ſwore words of Treaſon againſt him poſitively, and agreed in every point whilſt they were together: But by the prudence of the Inqueſt, being

put aſunder, and the Miſtriſs asked how her Maid came to be admitted to the knowledge of ſuch Matters; ſhe had an Evaſion ready, pretending her Maid to have craftily hearkened behind a Wainſcot Door, and ſo heard the Treaſon. But the Maid not ſuſpecting what her Miſtriſs had ſaid, continued her firſt Story, that ſhe heard the Treaſon from the Lord *Howard* himſelf, and was as much truſted by him as her Miſtriſs: By this Circumſtance the falſhood and Perjury (which Mrs. *Fitz-Harris* hath ſince acknowledged) was diſcovered, and the ſnare for the Life of the injured Lord was broken, as is manifeſt by his liberty now obtained by Law.

Witneſſes may come prepared, & tell plauſible Stories in open Court, if they know from the Proſecutor to what they muſt anſwer; and have agreed and acquaintedeach other with the tales they will tell, and have reſolved to be careful, that all their anſwers to croſs Interrogatories, may be conformable to their firſt ſtories: And if theſe relate only to

words ſpoken at ſeveral times in private to diſtinct Witneſſes, in ſuch a caſe, Evidence, if given in open Court, may ſeem to be very ſtrong againſt the perſon accuſed, though there be nothing of truth in it. But if ſuch Witneſſes were privately and ſeparately examined by the Grand Inqueſt, as the Law requires, and were to anſwer only ſuch queſtions as they thought fit, and in ſuch order as was beſt in their judgments, and moſt natural to find out the Truth of the Acculation, ſo that the Witneſſes could not gueſs what they ſhould be asked firſt, or laſt, nor one conjecture what the other had ſaid, (which they are certain of when they know beforehand what the Profecutor will ask in Court of every of them, and what they have reſolved to anſwer) if the Inqueſt ſhould put them out of their Road, and then compare all their ſeveral anſwers together, they might poſſibly diſcern marks enough of falſhood to ſhew that their Teſtimonies ought not to be depended upon, where life is

By what is now ſaid the reaſonableneſs of this Inſtitution of Secrecy may be diſcerned in reſpect to the diſcovery of Truth, and the protection of the Innocent from malicious Combinations and Perjuries. Yet the ſame Secrecy of the Kings Council is no leſs neceſſary to reſerve the guilty for puniſhment; when the Evidence againſt any party accuſed is not manifeſt and full, it may be kept without Prejudice under Secrecy until further Enquiry; and if ſufficient proof can afterwards be made of the Offence, an Indictment may be found by a Grand Inqueſt, and the party brought to anſwer it: But when the Examinations are in open Court, or the Kings Councils any other way divulged, and the Evidence is weak and leſs than the Law requires, 'tis not probable that it will be more or ſtronger, and ſhould an Indictment be found, and the party tried by a Petit Jury, whilſt the Evidence is not full, they muſt and ought to acquit him, and then the further proſecution for the ſame Offence is for ever barred,

though his guilt ſhould afterward be manifeſt, and confeſſed by himſelf.

From hence may certainly be concluded that Secrecy in the Examinations and Enquiries of Gr. Juries is in all reſpects for the Intereſt and advantage of the King. If he be concerned to have ſecret Treaſon, Felonies, and all other enormities brought to light, and that none of the Offenders ſhould eſcape Juſtice; if the gain of their Forfeitures be thought his intereſt (which God forbid) then the firſt notices of all dangerous crimes, and wicked confederacies ought to be ſecretly and prudently purſued and ſearcht into by the Grand Inqueſt; the accuſers and Witneſſes ought not to publiſh in a Court before a multitude what they pretend to know in ſuch caſes, until the diſcretion of ſo many honeſt men of the neighbourhood, hath firſt determined whether their teſtimony will amount to ſo good and full Evidence that it may be made publick with ſafety to the King and People in order to Juſtice. Elſe they are obliged by Oath

to lock up in their own breaſts all the Circumſtances and Preſumptions of Crimes, until they, or ſuch as ſhall ſucceed in the ſame Truſt, ſhall have diſcovered (as they believe) Evidence enough to convict the Accuſed, and then, and not before, they are to accuſe the Party upon Record, by finding the Bills, (as it's uſually called.) But when Bills are offered without ſatisfactory Evidence, and they neither know, nor can learn any more, they ought for the King's ſake, to indorſe *Ignoramus* upon them, leſt his Honour and Juſtice be ſtained by cauſing or permitting ſuch Proſecution of his People in his own name, and at his ſuit, as ſhall appear upon their Tryal and Acquittal to have been frivolous, or elſe malicious deſigns upon their Lives and Fortunes.

If it ſhould be ſaid, that whatſoever reaſons there are for this Oath of Secrecy; yet it cannot deprive the King of the benefit of having the Evidence made publick, if he deſires it, and that the Grand Jury do not break their Oaths

when the King or the Profecutor for him will have it ſo: 'Tis not hard to ſhew that ſuch Notions have no foundation in Law or Reaſon, and ſeem to come from men who have not well ſtudied the firſt principles of the *Engliſh* Government or of true Religion.

Whoſoever hath learnt that the Kings of *England* were ordained for the good Government of the Kingdom in the Execution of the Laws, muſt needs know, that the King cannot lawfully ſeek any other benefit in judicial proceedings, than that common Right and Juſtice be done to the People according to their Laws and Cuſtoms. Their Safety and Proſperity are to be the objects of His continual Care and Study, that being higheſt concern. The greatneſs and Honour of a Prince conſiſts in the virtue, Multitude, Wealth and Proweſs of his People; and his greateſt Glory is, by the excellence of his Government ſo to have encouraged Virtue and Piety, that few or no Criminals are to be found in his Dominions. Thoſe who

who have made this their principal aim, have in ſome places ſo well ſucceeded, as to introduce ſuch a Diſcipline and rectitude of manners, as rendred every man a Law unto himſelf. As it is reported in the Hiſtory of *Peru*, that though the Laws were ſo ſevere as to make very ſmall Crimes capital, yet it often fell out, that not one man was put to Death in a year, within the whole compaſs of that vaſt Empire. *Gar. de la Vег. Hiſt. de los Incas.*

The King's only benefits in finding out and puniſhing Offenders by Courts of Juſtice are the preſervation and Support of the Government, the protection of the Innocent, revenging their wrongs, and preventing further miſchiefs by the terrors of exemplary puniſhments.

The King is the head of Juſtice in the eſteem of our Laws, and the whole Kingdom is to expect right to be done them in his ſeveral Courts inſtituted by Law for that purpoſe, Therefore Writs iſſue out in his name in all caſes where relief

relief is fought by the Subjects: and the wrongs done to the Lives or Limbs of the People are ſaid to be done againſt the Peace of the King, his Crown and Dignity, reckoning it a diſhonor to him and his Government, that Subjects ſhould not whilſt they live within the Law, enjoy Peace and Security. It ought to be taken for a ſcandal upon the King, when he is repreſented in a Court of Juſtice as if he were partially concerned, or rather inclined to deſire, that a party accuſed ſhould be found guilty, than that he ſhould be declared innocent, if he be ſo in Truth. Doubtleſs the King ought to wiſh in all Enquiries made after Treaſon, Felonies, &c. that there were none to be found in his Kingdom; and that whoſoever is accuſed, might be able to anſwer ſo well and truly for himſelf, as to ſhew the Accuſation to be erroneous or falſe, and to be acquitted of it. Something of this appears in the common Cuſtom of *England*, that the Clerks of the Kings Courts of Juſtice, when any man hath

pleaded

pleaded not guilty to an Indictment, prays forthwith that God would ſend him a good deliverance.

The Deſtruction of every Criminal is a loſs to a Prince, and ought to be grievous to him, in the common regard of humanity, and the more particular Relation of his Office and the name of Father. The Kings Intereſt and Honour is more concerned in the Protection of the Innocent, than in the puniſhment of the guilty. This maxime can never run them into exceſſes; for it hath ever been looktupon as a mark of great Wiſdom and Virtue in ſome Princes and States, upon ſeveral occaſions to deſtroy all Evidences againſt Delinquents; and nothing is more uſual than to compoſe the moſt dangerous diſtempers of Nations by Acts of general Amneſty, which were utterly unjuſt, if it were as great a crime to ſuffer the Guilty to eſcape, as to deſtroy the Innocent. We do not only find thoſe Princes repreſented in Hiſtory under odious Characters, who have baſely murthered

murthered the Innocent. but such as by their Spies and Informers were too inquisitive after the guilty; whereas none was ever blamed for Clemency, or for being too gentle Interpreters of the Laws. *Tho. Trajan* was an excellent Prince, endowed with all heroical Virtues, yet the most eloquent Writers, and his best friends found nothing more to be praised in his Government, than that in his time, all men might think what they pleased, and every man speak what he thought, and he had no better way of distinguishing himself from his wicked Predecessors, than by hanging up the Spies and Informers, whom they had employed for the discovery of crimes. But if the punishment of Offenders were as universally necessary as the Protection of the Innocent, he were as much to be abhorred as *Nero*; and that clemency which is so highly praised, were to be lookt upon as the worst of vices, and those who have hitherto been taken for the best of Princes, were alto-

Tacit. lib. 1. *Hist.*

altogether as deteſtable as the worſt.

Moreover all humane Laws were ordained for the preſervation of the Innocent, and for their ſakes only are puniſhments inflicted; that thoſe of our own Country do ſolely regard this, was well underſtood by *Forteſcue*, who ſaith, Indeed I could rather wiſh Twenty Evildoers to eſcape death through pitty, than one man to be unjuſtly condemned. Such Blood hath cried to Heaven for Vengeance againſt Families and Kingdoms, and their utter deſtruction hath enſued. If a Criminal ſhould be acquitted by too great lenity, caution, or otherwiſe. he may be reſerved for future Juſtice from Man or God, if he doth not repent; but 'tis impoſſible that ſatisfaction or reparation ſhould be made for innocent Bloodſhed in the forms of Juſtice.

Fort. *de Laud. Leg. Ang.* ch. 27.

Without all queſtion the Kings only juſt Intereſt in the Evidence given againſt the party accuſed, and in the manner of taking it, is to have the truth made

made manifeſt, that Juſtice may thereupon be done impartially: And if accuſations may be firſt examined in ſecret more ſtrictly and exactly, to prevent Fraud and Perjury than is poſſible to be done in open Court, (as hath before appeared) then 'tis for the Kings benefit to have it ſo. And nothing done in, or by a Court about the Trial of the accuſed, is for the King, (in the ſenſe of our Law) unleſs it ſome way conduce to Juſtice in the caſe. The Witneſſes which the Proſecutor brings, are no further for the King, than they tell the truth and the whole Truth impartially; and by whomſoever any others may be called, upon the Enquiry, or the Trial to be examined, if they ſincerely deliver the truth of the matters in queſtion, they are therein the Kings Witneſſes, though the accuſed be acquitted by reaſon of their Teſtimonies. If ſuch as are offered by the Attorney General to prove Treaſon againſt any man, ſhall be found to ſwear falſly, maliciouſly, or for Reward or Promiſes, though they

they depoſe poſitively Facts of Treaſon againſt the Accuſed, yet they are truly and properly Witneſſes againſt the King, by endeavouring to prevent Juſtice, and deſtroy his Subjects: Their Malice and Villany being confeſſed or proved, the King's Attorney ought (*ex Officio*) to proſecute them in the King's Name, and at his Suit, for their Offences againſt him in ſuch Depoſitions pretended to have been for him: and the legal Form of the Indictment ought to be for their ſwearing falſly and maliciouſly againſt the Peace of the King, his Crown and Dignity. The Proſecutors themſelves, notwithſtanding their big words, and aſſuming to themſelves to be for the King, if their Proſecution ſhall be proved to be malicious, or by Conſpiracy againſt the Life or Fortune of the Accuſed, they are therein againſt the King, and ought to be Indicted at the King's Suit, for ſuch Proſecutions done againſt His Crown and Dignity. And if an Attorney General ſhould be found knowingly guilty of abetting ſuch a Conſpiracy,

cy, his Office could not excuſe or legally exempt him from ſuffering the villanous judgment to the deſtruction of him and his Family. 'Tis eſteemed in the Law one of the moſt odious Offences againſt the King, to attempt in his name to deſtroy the Innocent, for whoſe Protection he himſelf was ordained. Qu. *Elizabeth* had the true ſenſe of our Law, when the Lord *Burleigh*, upon Sir *Edward Coke* her then Attorney's coming into her preſence, told her, this is he who proſecutes *pro Domina Regina*, for our Lady the Queen; and ſhe ſaid ſhe would have the form of the Records altered; for it ſhould be *Attornatus Generalis qui pro Domina veritate ſequitur*. The Attorney General who proſecutes for our Lady the Truth. Whoever is truſted in that employment diſhonours his Maſter and Office, if he gives occaſion to the Subjects to believe that his Maſter ſeeks other profits or advantages by Accuſations, than the common Peace and Welfare: He ought

Co. *Inſt.* 3d part, p. 79.

ought not to excite a jealouſie in any of their minds, that confiscations of Eſtates are deſigned or deſired by any of the King's Miniſters; whoſoever makes ſuch advantages to the Crown their principal aim in accuſing, are either Robbers and Murtherers, (in the Scripture ſenſe) in ſeeking innocent Blood for gain, or in the mildeſt Conſtruction, (ſuppoſing the Accuſation to be on good grounds) they ſhew themſelves to be of corrupt minds, and a ſcandal to their Maſter and the Government. Profit or loſs of that kind ought to have no place in judicial proceedings againſt ſuſpected Criminals, but truth is only to be regarded; and for this reaſon the Judgments given in Court of humane Inſtitution, are in Scripture called, the Judgments of God, who is the God of truth.

Yet further, if any benefit to the King could be imagined by making the Evidence to the Grand Jury publick, it could not come in competition with the Law expreſſed in their Oath; which by conſtant uninterrupted uſage, for

so many Ages, hath obtained the force of Law. *Bracton* and *Britton* in their several Generations bear Witness, that it was then practised; and greater proof of it needs not be sought, than the Disputes that appears by the Law Books to have been amongst the ancient Lawyers, whether it was Treason or Felony for a Grand Jury to discover, either who was indicted, or what Evidence was given them. The Trust of the Grand Juries was thought so sacred in those Ages, and their secrecy of so great concern to the Kingdom, that whosoever should break their Oath therein, was by all thought worthy to die; only some would have had them suffer as Traitors, others as Felons. And at this day it is held to be a high Misprision punishable by Fine and Impoverishment. The Law then having appointed the Evidence to be given to Grand Juries in secret, the King cannot desire to have it made publick. He can do no wrong, saith the old Maxime, that is

Co. *Instit.* 3d part, p. 107. Rulls *Indic.* 771.

he

he can do nothing againſt the Law, nor is any thing to be judged for his benefit that is not warranted by Law; His Will, Commands, and deſires are therein no otherwiſe to be known: He cannot change the legal Method or manner of enquiring by Juries, nor vary in any particular caſe from the cuſtomary and general forms of judicial proceedings; he can neither abridge nor enlarge the power of Juries, no more than he can leſſen the legal Power of the Sheriffs or Judges, or by ſpecial Direction order the one how they ſhall execute Writs, and the other how they ſhall give Judgments, though theſe made by himſelf.

'Tis criminal no doubt, for any to ſay, that the King deſires a Court of Juſtice, or a Jury, to vary from the direction of the Law, and they ought not to be believed therein: If Letters, Writs, or other Commands ſhould come to the Judges for that purpoſe, they are bound by their Oaths not to regard them, but to hold them for null; the

Statutes of 2 E. 3. 8. and 20 E. 3. 1. are expreſs, That if any Writs or Commandments come to the Juſtices in diſturbance of the Law, or the Execution of the ſame, or of right to the parties, they ſhall proceed as if no ſuch Letters, Writs, or Commands were come to them: And the Subſtance of theſe and other Statutes is inſerted into the Oath taken by every Judge; and if they be under the moſt ſolemn and ſacred Tye in the Execution of Juſtice, to hold for nothing or none the Commands of the King under the great Seal, ſurely the Word or Deſire of an Attorney General, in the like caſe, ought to be leſs than nothing.

Beſides, they are ſtrangely miſtaken, who think the King can have an Intereſt different from, or contrary unto that of the Kingdom, in the proſecution of Accuſed Perſons: His Concernments are involved in thoſe of his People; and he can have none diſtinct from them. He is the Head of the Body Politick, and the Legal courſe of doing Juſtice, is like

the orderly Circulation of the Blood in the Natural Bodies, by which both Head and Body are equally preserved, and both perish by the interruption of it.

The King is obliged to the utmost of his Power to maintain the Law, and Justice in its due course, by his Coronation Oath, and the Trust thereby reposed in him. In former Ages he was conjured not to take the Crown, unless he resolved punctually to observe it. *Bromton* & others speaking of the Coronation of *Richard* the First, deliver it thus, That having first taken the Oath; *Deinde indutus Mantello, ductus est ad Altare, & conjuratus ab Archiepiscopo, & prohibitus ex parte Dei, ne hunc Honorem sibi assumat, nisi in mente habeat tenere Sacramenta & Vota quæ superius fecit. Et Ipse respondit, se per Dei auxilium omnia supradicta observaturum bona fide. Deinde cepit Coronam de Altari, & tradidit eam Archiepiscopo, qui posuit eam super caput*

Brom. p. 1159. *Mat. Paris; p.* 153. *Hoved. p.* 374. *Baker. p.* 68.

caput Regis, & ſic Coronatus Rex, ductus eſt ad ſedem ſuam. Afterward cloathed with the Royal Robe, he is led to the Altar, and conjured by the Archbiſhop, and forbid in the Name of God, not to aſſume that Honour, unleſs he intended to keep the Oaths and Vows he had before made; and he anſwered, by God's help he would faithfully obſerve all the Premiſes: And then he took the Crown from off the Altar, and delivered it to the Archbiſhop, who put it upon the King's head, and the King thus Crowned, is led unto his Seat. The violation of which Truſt cannot but be as well a wound unto their Conſciences, as bring great Prejudice upon their Perſons and Affairs.

The Common Law that exacts this, doth ſo far provide for Princes, That having their minds free from cares of preſerving themſelves they may reſt aſſured, that no Acts Words or Deſigns, that may bring them into danger, can be concealed from the many hundreds of men, who by the Law are appointed

in all parts of the Kingdom, watchfully to take care of the King; and are so far concerned in his safety, that they can hope no longer to enjoy their own Lives and Fortunes in Peace, than they can preserve him, and the good Order which according to the Laws he is to uphold.

It is the joint Interest of King and People that the antient Rules of doing Justice be held sacred and inviolable; and they are equally concerned in causing strict enquiries to be made into all Evidences given against suspected, or accused Persons, that the Truth may be discovered; and such as dare to disturb the publick Peace by breaking the Laws, may be brought to punishment. And the whole course of Judicial Proceedings in Criminal Causes, shews that the People is therein equally concerned with the King, whose name is used. This is the ground of that distinction which Sir *Ed. Coke* makes between the Proceedings in Pleas of the Crown, and Actions for wrongs done to the King himself.

Ca. 94. Inst. pag. 126. himself. *In Pleas of the Crown, or other common offences, nusances, &c. principally concerning others, or the Publick, there the King by Law must be apprised by Indictment, Presentment, or other matter of Record; but the King may have an Action for such wrong as is done to himself, and whereof none other can have an Action but the King, without being apprised by Indictment, Presentment, or other matter of Record, as a* Quare impedit, Quare incumbravit, *a Writ of Attaint, of Debt, Detinue of Ward, Escheat, Scire fac. pur repealer patent*, &c. Unto which every man must answer: But no man can be brought to answer for Publick Crimes at the King's Suit otherwise than by Indictment of a Grand Jury.

The whole Course of doing Justice upon Criminals, from the beginning of the process, unto the Execution of the Sentence, is, and ever was esteemed to be the Kingdoms concernment as is evidenced by the frequent Complaints

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made in Parliament, that Capital Offenders were pardon'd to the Peoples damage and wrong. In the 13. *Rich.* 2. it is ſaid, that the King hearing the grievous complaints of his Commons in Parliament, of the outragious miſchiefs which happened unto the Realm, for that Treaſons, Murders, and Rapes of Women, be commonly done, and committed, and the more becauſe Charters of Pardon had been eaſily granted in ſuch caſes; And thereupon it was enacted, that no pardon for ſuch crimes ſhould be granted, unleſs the ſame were particularly ſpecified therein, and that if a pardon were otherwiſe granted for the death of a man, the Judges ſhould notwithſtanding enquire by a grand Jury of the Neighbourhood concerning the death of every ſuch perſon, and if he were found to have been wilfully murthered, ſuch Charter of Pardon to be diſallowed; and proviſions were made by impoſing grievous Fines upon every perſon, according to his Degree and Quality, or Imprisonment, who ſhould preſume

ſume to ſue to the King for any pardons of the aforeſaid Crimes, and that ſuch perſons might be known to the whole Kingdom, their names were to be upon ſeveral Records. The like had been done in many Statutes made by ſeveral Parliaments, as in the 6 *Ed.* 1. 9. the 2 *Ed.* 3. 2. the 10 *Ed.* 3. 2. and the 14 *Ed.* 3. 15. wherein it was acknowledged by the King in Parliament, *That the Oath of the Crown had not been kept, by reaſon of the Grant of Pardons contrary to the aforeſaid Statutes; and enacted that any ſuch Charter of Pardon, from thenceforth granted againſt the Oath of his Crown and the ſaid Statutes, the ſame ſhould be holden for none.* In the 27 *Edw.* 3. 2. It is further provided for preventing the Peoples damage by ſuch pardons, *That from thenceforth in every Charter of Pardon of Felony, which ſhall be granted at any mans ſuggeſtion, the ſaid ſuggeſtion and the name of him that maketh the ſuggeſtion, ſhall be compriſed in the ſame Charter, and if after the ſame ſuggeſtion be found untrue,*

true, the Charter ſhall be diſallowed and holden for none: And the Juſtices before whom ſuch Charter ſhall be alledged, ſhall enquire of the ſame ſuggeſtion, and that as well of Charters granted before this time, as of Charters which ſhall be granted in time to come, and if they find them untrue, then they ſhall diſallow the Charter ſo alledged, and ſhall moreover do as the Law demandeth.

Thus have Parliaments from time to time declared, that the Offences againſt the Crown are againſt the publick welfare, and that Kings are obliged by their Oath and Office to cauſe Juſtice to be done upon Traitors and Felons for the Kingdoms ſake; according to the ancient common Law, declared by *Magna Charta* in theſe words: *Nulli negabimus, nulli vendemus, nulli differemus Juſtitiam.* We will ſell to no man, we will not deny or defer to any man either Juſtice or Right. 9 *Hen.* 3. 29.

And as the publick is concerned, that the

the due and legal Methods be observed in the Prosecution of Offenders, so likewise doth the security of every single man in the Nation depend upon it: No man can assure himself he shall not be accused of the highest crimes. Let a mans Innocence and prudence be what it will, yet his most inoffensive Words and Actions are liable to be misconstrued, and he may, by Subornation and Conspiracy, have things laid to his charge, of which he is no ways guilty. Who can speak or carry himself with that circumspection, as not to have his harmless Words or Actions wrested to another sence than he intended? Who can be secure from having a Paper put into his Pockets, or laid in his House, of which he shall know nothing till his Accusation? History affords many Examples of the detestable practices in this kind of wicked Court Parasites, among which one may suffice for Instance, out of *Polibius* an approved Author. *Hermes* a powerful Favourite, under *Antiochus* the younger,

Polib. lib. 5.

er, but a man noted to be a favourer of Liars, was made use of against the innocent and brave *Epigenes*: He had long watcht to kill him, for that he found him a man of great Eloquence and Valour, having also favour and Authority with the King: He had unjustly but unsuccessfully accused him of Treason by false glosses put upon his faithful advice given to the King in open Council; this not prevaling, he by artifice got him put out of his Command, and to retire from Court; which done, he laid a Plot against him, with the help and Council of (one of his Complices) *Alexis*, and writing Letters as if they had been sent from *Molon*, (who was then in open Rebellion against his Prince for fear, amongst other Reasons, of the Cruelty and Treachery of *Hermes*) and corrupted one of *Alexis*'s Servants with great Promises, who went to *Epigenes*, to thrust the Letters secretly amongst his other Writings, which when he had done, *Alexis* came suddenly to *Epigenes*, demanding of him, if he had received

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any Letter from *Molon*; and when he ſaid he had none, the other ſaid, he was confident he ſhould find ſome; wherefore entring the Houſe to ſearch, he found the Letters, and taking this occaſion, ſlew him, (leſt if the Fact had been duly examined, the Conſpiracy had been diſcovered.) Theſe things happening thus, the King thought that he was juſtly ſlain; in this manner the worthy *Epigenes* ended his days. But this great mans deſigns did not reſt here; for within a while heightened with ſucceſs, he ſo arrogantly abuſed His Maſters Authority, as he grew dangerous to the King himſelf, as well as to thoſe about him; inſomuch as *Antiochus* was forced for that he hated and feared *Hermes*, to take away his Life by Stratagem, thereby to ſecure himſelf. By theſe, and a thouſand other ways, the moſt unblemiſht Innocence may be brought into the greateſt danger. Since then every man is thus eaſily ſubject to queſtion; and what is one mans caſe this day may be another man's to morrow,

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it is undoubtedly every mans concern, to see (as far as in him lies) in every case, that the accused Person may have the benefit of all such provisions, as the Law hath made for the defence of Innocence and Reputation.

Now to this end there is nothing so necessary as the secret and separate examination of Witnesses; for though perhaps (as hath been already observed) it may be no very difficult thing for several persons, who are permitted to discourse with each other freely, and to hear, or be told what each of their fellows had been asked and answered, to agree in one story, especially if the Jury may not ask what questions they shall think fit for the satisfaction of their own Consciences; but that they shall be so far under the correction and censure of the Judges; as to have the questions which they put, called by them trifles, impertinent, and unfit for the Witnesses to speak to; yet if they be examined apart, with that due care of sifting out all the Circumstances which the Law requires,

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quires, where every man of the Jury is at full liberty to enquire into any thing for his clearer Information, and that with what deliberation they think fit, and all this be done with that Secrecy which the Law commands; it will be almost impossible for a man to suffer under a false Accusation.

Nor has the Law been less careful for the Reputation of the Subjects of *England*, than for their Lives and Estates, and this seems to be one reason why in criminal cases, a man shall not be brought to an open legal Trial by a Petit Jury, till the Grand Jury have first found the Bill. The Law having entrusted the Grand Inquest in a special manner with their good names; they are therefore not only to enquire whether the fact that is laid, was done by the party accused, but into the circumstances thereof too, whether it were done traiterously, feloniously, or maliciously, &c. according to the manner charged, which Circumstances are not barely matter of form, but do constitute

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the very eſſence of the Crime; and laſtly into the Credit of the Witneſſes, and that of the party accuſed, and unleſs they find both the Fact proved upon him, and ſtrong preſumptions of ſuch aggravating circumſtances attending it, as the Law requires in the ſpecification of ſuch Crime, and likewiſe are ſatisfied in the credibility of the Witneſſes; they ought not to expoſe the Subject to an open Trial in the face of the County, to a certain loſs of his Reputation, and hazard of his Life and Eſtate. Moreover ſhould this practice of publick Examination prevail, and the Jurors Oath of Secrecy continue, how partial and unequal a thing would it be to declare that to all the World, which will blaſt a mans good name, and religiouſly cenceal what they may know tending to his Juſtification: To examine Witneſſes (perhaps ſuborned) certainly prepared, and have Evidence dreſſed up with all the advantages that Lawyers wits can give it, of the foulſt Crimes a man can be guilty of, and

this given before ſome thouſands againſt him, and yet for the ſame Court to ſwear thoſe, whom the Law makes Judges in the caſe, not to reveal one word of thoſe reaſons, which have ſatisfied their Conſciences of his Innocence. What is this, but an Artifice of ſlandring men (it may be) of the moſt unſpotted cnnverſation, and of abuſing Authority, not ſo much to find men guilty, as to make them infamous? After this Ignominy is fixed, what Judgment can the Auditors (and from them the World) make, but of high probability of guilt in the party accuſed, and Perjury in the Jury.

This courſe, if it ſhould be continued, muſt needs be of moſt dangerous conſequence to all ſorts of men; it will both ſubject every one without relief to be defamed, and fright the beſt and moſt conſciencious men, from ſerving on Grand Juries, which is a moſt neceſſary part of their duty. Now ſince there is in our Government (as in every one that is well conſtituted there ought

to be) great liberty of Accuſation, that no man may be encouraged to do ill through hopes of impunity, if by this means a Method be opened, for the blaſting the moſt innocent mans honour, and deterring the moſt honeſt from being his Judges, what remains, but that every mans Reputation, which is moſt dear unto ſuch as are good, is held precariouſly, and it will be in the power of great men to pervert the Laws, and take away whoſe Life and Eſtate they pleaſe, or at leaſt to faſten imputations of the moſt deteſted crimes upon any, whom, for ſecret reaſons they have a mind to defame. The conſequences of which ſcandal, as they are very miſchievous to every man, ſo in a Trading Country in a more eſpecial manner, to all who live by any vocation of that kind.

The greateſt part of Trade is driven upon credit, moſt men of any conſiderable Employment, dealing for much more than they are truly worth, and every

mans credit depends as well upon his behaviour to the Government he lives under, as upon his private honesty in his transactions between man and man; so that the suspicion only of his being obnoxious to the Government is enough to set all his Creditors upon his back, and put a Stop to all his Affairs, perhaps to his utter ruine. What expedition and violence will they all use to recover their debts, when he shall be publickly charged with such crimes as forfeit Life and Estate? Though there should not be one word of the Accusation true, yet they knowing the charge and the seeming proofs in the Court, and the consequences of it, and not being acquainted with the truth, as it appears to the Jury, self interest will make his Creditors to draw in their effects, which is no more than a new contrivance, under colour of Law, of undoing honest men.

If to prevent any of these mischiefs the Jury should discover their fellows and their own Counsel, as the Court by

publick Examination doth, it would not only be a wilful breach of their Oath, but a betraying of the truſt which the Law has repoſed in them, for the ſecurity of the Subject: For to ſubject the reaſons of their Verdicts upon Bills to the cenſure of the Judges, were to diveſt themſelves of the Power which the Law has given them, for moſt important conſiderations, without account or control, and to intereſt thoſe in it, whom the Law has not in this caſe truſted, and ſo by degrees, the courſe of Juſtice in one of the moſt material parts may be changed, and a fundamental ſecurity of our Liberty and Property inſenſibly loſt. On the other hand, if for fear of being unworthily reproached as *Ignoramus* Jury-Men, obſtinate fellows, that obſtruct Juſtice, and diſſerve the King, the Grand Jury ſhall ſuffer the Judges, or the Kings Counſel to prevail with them, to indorſe *Billa vera*, when their Conſciences are not ſatisfied in the truth of the Accuſation, they act directly againſt their Oaths, oppreſs the

innocent whom they ought to protect; as far as in them lies, ſubject their Country, themſelves, and poſterity to Arbitrary powers, pervert the adminiſtration of juſtice, and overthrow the Government, which is inſtituted for the obtaining of it, and ſubſiſts by it.

This ſeems to be the greateſt Treaſon, that can be committed againſt the whole Kingdom, and threatens ruine unto every man in private in it. None can be ſafe againſt authorized Malice, and notwithſtanding the care of our Anceſtors, Rapine, Murther, and the worſt of crimes, may be advanced by the formality of Verdicts, if Grand Juries be overawed, or not ſuffered to enquire into the Truth, to the ſatisfaction of their Conſciences. Every man whilſt he lives innocently, doth, under God, place his hopes of ſecurity in the Law, which can give no protection, if its due courſe be ſo interrupted, that frauds cannot be diſcovered, Witneſſes may as well favour offenders, as give falſe teſtimony againſt the guiltleſs, and if they, by hearing

hearing what each other ſaith, are put into a way of concealing their villainous deſigns, there can be no legal Revenge of the crimes already committed. Others by their impunity will be encouraged to do the like: And every quiet minded perſon will be equally expoſed unto private injuries, and ſuch as may be done unto him, under the colour of Law. No man can promiſe unto himſelf any ſecurity for his Life or goods, and they who do not ſuffer the utmoſt violences in their own perſons, may do it in their Children, Friends, and neareſt Relations, if he be deprived of the remedies that the Law ordains, and forced to depend upon the Will of a Judge, who may be (and perhaps we may ſay) are too often corrupted, or ſwayed by their own Paſſions, Intereſts, or the Impulſe of ſuch as are greater than they. This miſchief is aggravated by a commonly received Opinion, that whoſoever ſpeaks againſt an accuſed perſon is the Kings Witneſs, and the worſt of men, in their worſt deſigns do

uſually ſhelter themſelves under that name, whereas he only is the Kings Witneſs, who ſpeaks the truth, whether it be for or againſt him that is accuſed. As the Power of the King is the Power of the Law, he can have no other intention than that of the Law, which is to have Juſtice impartially adminiſtred, and as he is the Father of his People, he cannot but incline ever to the gentleſt ſide, unleſs it be poſſible for a Father to delight in the deſtruction, or deſire to enrich himſelf by the confiſcation of his Childrens Eſtates. If the moſt wicked Princes have had different thoughts, they have been obliged to diſſemble them. We know of none worſe than *Nero*, but he was ſo far from acknowledging, that he deſired any mans condemnation, that he looked upon the neceſſity of ſigning Warrants for the execution of Malefactors, as a burthen, and rather wiſhed he had not learnt to write, than to be obliged to do it. They who by ſpreading

Sne. Vit. Ner. *Vtinam neſcirem literas.*

ſpreading ſuch barbarous errours, would create unto the King, an intereſt different from that of his People which he is to preſerve, whilſt they pretend to ſerve him in deſtroying of them, they deprive him of his honour and dignity; Juſtice is done in all places, in the name of the chief Magiſtrate, it being preſumed, that he doth embrace every one of his Subjects with equal tenderneſs, until the guilty are by legal proofs diſcriminated from the Innocent, and amongſt us the Kings name may be uſed in civil caſes, as well as criminal: But it is as impoſſible for him rightly to deſire I ſhould be condemned for killing a man whom I have not killed, or a Treaſon that I have not committed, as that my Land ſhould be unjuſtly taken from me by a judgment in his Bench, or I ſhould be condemned to pay a debt that I do not owe.

In both caſes we ſue unto him for Juſtice, and demand it as our right. We are all concerned in it, publickly, and privately, and the King, as well as all

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the Officers of Juſtice, are by their ſeveral Oaths, obliged in their reſpective capacities to perform it. They are bound to give their aſſiſtance to find out Offenders, and the Kings Attorney is by his Oath to proſecute them, if he be required; and he is not only the Kings ſervant in ſuch caſes, but the Nations; or rather, cannot otherwiſe ſerve the King, than by ſeeing Juſtice done in the Nation. Whenſoever any man receives an injury in his Perſon, Wife, Children, Friends, or goods, the King is injured, in as much as he is by his Office to prevent ſuch miſchief, and ought to be concerned in the Welfare of every one of his Subjects; but the parties to whom the injuries are done, are the immediate ſufferers, and the proſecution is principally made, that they may be repared or revenged, and other innocent perſons ſecured by the puniſhment of Offenders, in which the King can be no otherwiſe concerned, than as he is to ſee his Office faithfully performed, and his People protected.

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The Kings ſuit therefore is in the behalf of his People, yet the Laws leave unto euery man a Liberty, in caſe of Treaſons, Murthers, Rapes, Robberies, &c. to ſue in the Kings name, and crave his aid, or by way of appeal in his own. The ſame Law looks upon Felons, or Traitors as publick Enemies, and by authorizing every one to purſue or apprehend them, teacheth us, that every man, in his place, ought to do it. The ſame Act whereby one, or a few are injured, threatneth all, and every mans private intereſt ſo concurs with that of the publick, that all depends upon the exact preſervation of the Method preſcribed by the Law, for the impartial inquiſition after ſuſpected Offenders, and moſt tender care of preſerving ſuch as are innocent. As this cannot poſſibly be effected without ſecret and ſeparate examinations, the forbidding of them is no leſs, than to change the Courſe, which is enjoyned by Law, confirmed by cuſtom, and grounded upon reaſon and Juſtice. If

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on the other ſide any man believe, that ſuch as in the Kings name proſecute ſuſpected Delinquents, ought only to try how they may bring them to be condemned, he may be pleaſed to conſider, that all ſuch perſons ought, according unto Law, to produce no Witneſs whom they do not think to be true: No Evidence which they do not believe good, nor can conceal any thing that may juſtifie the accuſed. No trick or artifice can be lawfully uſed to deceive a Grand Jury, or induce them to find or reject a Bill, otherwiſe than as they are led by their own Conſciences. All Lawyers were antiently ſworn to put no deceit upon the Courts for their Clients ſake, and there are Statutes ſtill in force to puniſh them, if they do it, but there is an eternal obligation upon ſuch as are of Counſel againſt perſons accuſed of crimes, not to uſe ſuch arts as may bring the innocent to be condemned, and thereby pervert that which is not called the judgment of man, but of God, becauſe man renders it in the ſtead, and by

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the Commandment of God, ſuch practiſes exalt the Juriſdiction of Tribunals, but infect and pollute them with that innocent Blood, which will be their overthrow: And leaſt of all, can it be called a ſervice to the King, ſince none could ever ſtand againſt the cry of it. This is neceſſarily implyed in the Attorney general his Oath, to ſerve the King in his Kingly Office, wherein the Law preſumes he can do no wrong: But the greateſt of all wrongs, and that which hath been moſt deſtructive unto Thrones, is by Fraud to circumvent and deſtroy the Innocent: This is to turn a legal King into a *Nimrod*, a Hunter of Men: This is not to act the part of a Father or a Shepherd, who is ready to lay down his Life for his Sheep, but ſuch as the Pſalmiſt complains of, who eat up the People as if they eat Bread: *Jezebel* did perhaps applaud her own Wit, and think ſhe had done a great Service to the King, by finding out men of *Belial*, Judges, and Witneſſes to bring *Naboth* to be ſtoned; but that unregarded

Blood

Blood was a Canker, or the Plague of Leproſie in his Throne and Family, which could not be cured but by its overthrow and extinction. But if the Attorney General cannot ſerve the King by abuſing Juries, and ſubverting the Innocent, he can as little gain an advantage to himſelf by falſifying his Oath, by the true meaning whereof he is to proſecute Juſtice impartially, and the Eternal Divine Law would annul any Oath or Promiſe that he ſhould have taken to the contrary, even though his Office had obliged him unto it.

The like Obligation lies upon Jurors not to ſuffer themſelves to be deluded, or perſuaded, that the Judges, Kings Council, or any others can diſpenſe with that Oath, or any part of it, which they have taken before God unto the whole Nation; nor to think that they can ſwerve from the Rules ſet by the Law without a damnable breach of it, The power of relating, or diſſolving Conſcientious Obligations, acknowledged in the Pope, makes a great part

of the *Roman* Superſtition; and that grand Impoſtor could never corrupt Kingdoms and Nations to their deſtruction, and the Eſtabliſhment of his Tyranny, until he had brought them to believe he could diſpenſe with Oaths, taken by Kings unto their Subjects, and by Subjects to their Kings; nor impoſe ſo extravagant an Errour upon either, until he had perſuaded them he was in the place of God. It is hard to ſay how the Judges or Kings Council can have the ſame Power, unleſs it be upon the ſame Title; but we may be ſure they may as well diſpenſe with the whole Oath as any part of it, and can have no pretence unto either, unleſs they have the Keys of Heaven and Hell in their keeping: It is in vain to ſay, the King as any other man may remit the Oath taken unto and for himſelf; He is not a party for himſelf, but in the behalf of his People, and cannot diſpoſe of their Concernments without their Conſent, which is given only in Parliament.

The Kings Council ought to remember, they are in criminal Caſes of Council unto every man in the Kingdom; It is no ways referred unto the Direction of the Judges, or unto them, whether that ſecrecy enjoined by Law, be profitable unto the King or Kingdom; They muſt take the Law as it is, and render Obedience unto it, until it be altered by the Power that made it. To this end the Judges by Acts of Parliament, *viz*, 18 *Ed.* 3. *cap.* 8. and 20 *Ed.* 3. *Cap.* 1. are ſworn to ſerve the People, *Ye ſhall ſerve our Lord the King and his People in the Office of Juſtice*, &c, *Ye ſhall deny to no man common Right by the Kings Letters, nor no other mans, nor for no other cauſe; and in default thereof in any point, they are to forfeit their Bodies, Lands and Goods.* This proves them to be the Peoples Servants as well as the Kings.

Further by the expreſs words of the Commiſſions of Oyer and Terminer, they are required to *aſſiſt every man that ſuffers injury, and make diligent inquiſition*

ſition after all manner of falſhoods, deceits, offences, and wrongs done to any man, and thereupon to do Juſtice according to the Law: ſo that in the whole proceedings in order unto Tryal, and in the Tryals themſelves, the Thing principally intended, which ſeveral perſons are ſeverally in their capacities obliged to purſue, is, the diſcovery of Truth: The witneſſes are to depoſe *the Truth, the whole Truth, and Nothing but the Truth*: Thereupon the Council for the King are to proſecute: The Grand Jury to preſent: and the Petit Jury to try: Theſe are ſeveral Offices, but all to the ſame End; Tis not the Priſoner, but the Crime that is to be purſued; This primarily, the Offender but by conſequence; and therefore ſuch Courſes muſt be taken, as may diſcover that, and not ſuch as may enſnare him: When the Offence is found, the impartial Letter of the Law gives the Doom; and the Judges have no ſhare in it, but the pronouncing of it: Till then the Judges are only to preſide, and take Care, that every man

elſe, who is employed in this neceſſary Affair, do his duty according to Law. So that upon reſult of the whole tranſaction impartial Juſtice may be done, Either to the Acquittal, or condemnation of the Priſoner.

Hereby it is manifeſt why the Judges are obliged by Oath, To *Serve the People as well as the King*: And by Commiſſion, To *Serve every One that Suffers Injuries*. As they are to See that Right be done to the King, & His Injur'd Subjects in diſcovering of the Delinquent; So they are to be of Council with the Priſoner, whom the Law ſuppoſeth may be ignorant as well as innocent; and therefore has provided, that the Court ſhall be of Council for him, and as well inform him of what Legal advantages the Law allows him, as to reſolve any point of Law when he ſhall propoſe it to them; And it ſeems to be upon the preſumption of this ſteady impartiality in the Judges, (thus obliged by all that is held Sacred before God and man to be unbyaſſed) that the Priſoner

hath

hath no Council; for if the Court faithfully perform their duty, the Accuſed can have no wrong, or hardſhip, and therefore needs no Adviſer.

Now ſuppoſe a man perfectly innocent, and in ſome meaſure knowing in the Law, ſhould be accuſed of Treaſon or Felony; If the Judges ſhall deny unto the Grand Jury the Liberty of examining any witneſſes, except in open Court, where nothing ſhall be offered that may help to clear the Priſoner, but every Thing aggravated, that gives colour for the Accuſation; ſuch Perſons only produced, as the Kings Council, or the proſecutors ſhall think fit to call, of whoſe Credit alſo the Jury muſt not inquire, but ſhall be controll'd and brow-beaten in asking Queſtions, of ſuch unknown witneſſes, for their own Satiſfaction, if they have any Tendency to diſcover the Infamy of theſe witneſſes, or the Falſhood of their Teſtimony; How can Innocence ſecure any Man from being arraigned?

And if the Oath of the Judges ſhould

be as much forgotten in the further Proceedings upon the Tryal, where in Cases of Treason the Prisoner shall have all the Kings Council (commonly not the most unlearned) prepared with studied speeches, and arguments, to make him black, and odious, and to Strein all his words, and to alledge them for Instances of his guilt: If then all his private Papers, and Notes to help his memory in his Plea, and defence, shall be taken from him by the Gaoler, or the Court, and given to his Prosecutors; And all Advice & Assistance from Councils, or friends, and his neareſt Relations shall be denied him, & none suffered by word or writing to inform him of the indifferency, or honesty, or the Partiality or malice of the Pannels returned (whom the Law allows him to Challenge or refuse, either peremptorily, or for good Reasons offered;) should he be thus deprived of all the good provisions of the Law for his safety, To what Frauds, Perjuries, & Subornations is not he, and every man Exposed, who may be accu

ſed? What Deceits may there not be put upon Juries? and what Probability is there of finding ſecurity in Innocence? What an admirable Execution would this be of their Commiſſion, To *make diligent Inquiſition after all manner of Falſhoods, Deceipts, wrongs and Frauds, and thereupon to do Juſtice according to Law?* When at the ſame Time, if ſo Managed, a Method would be introduced of ruining and deſtroying any Man in the form of Juſtice. Such practices would be the higheſt diſhonour to the King imaginable, whoſe name is uſed, and ſo far Miſrepreſent the Kingly Office, as to make that appear, to have been Erected to vex and deſtroy the People, which was intended, and ordained to help and preſerve them.

The Law ſo far abhors ſuch proceedings, that it intends, that every Man ſhould be ſtrictly bound, to be Exactly juſt in their ſeveral Imployments, relating to the Execution of Juſtice. The Sergeant of the Kings Council (Sir *George Jeffrys*, among the reſt) who

proſecute in the King's name, and are conſulted in the forming bills of Indictment, and advice about the witneſſes and their Teſtimonies againſt the Accuſed; Theſe (if they would remember it) when they are made Sergeants, take an Oath (*Cokes* 2d Inſtitutes Pag. 214.) *as well & truly to ſerve the People* (whereof the party accuſed is one) *as the King himſelf and to miniſter the Kings matters duely and truely after the courſe of the Law to their Cunning*; Not to uſe their Cunning & Craft to hide the Truth and deſtroy the accuſed if they can.

They are alſo obliged by the Statute of *Weſtm.* 1. *Cap.* 29. To put no manner of Deceit or Colluſion upon the Kings Court, nor ſecretly to conſent to any ſuch Tricks as may abuſe or beguile the Court, or the party, be it in Cauſes Civil or Criminal: And it is ordained that if any of them be convicted of ſuch practices, he ſhall be impriſoned for a year, & never be heard to plead again in any Court; and if the Miſchievous conſe-

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quence of their Treacheries be great, they are Subject to further and greater punishments. Our Auntient Law Book called *the Mirror of Justice*, Cap. 2. Sect. 4. says, *That every Sergeant Pleader is chargeable by his Oath, not to maintain or defend any wrong or Falshood to his Knowledge, but shall leave his Client when he shall perceive the wrong intended by him: Also that he shall not move or proffer any false Testimony, nor consent to any Lyes Deceits or Corruptions whatsoever in his pleadings.*

As a further Security unto the People against all Attempts upon their Laws, Exemplary Justice hath been done, in several Ages, upon such Judges, and Justiciaries, as through Corruption, Submission unto unjust Commands, or any other Sinister consideration, have dared to swerve from them: The punishments of these wicked Men remain upon Record, as Monuments of their Infamy to be a Terror unto all that shall succeed them. In the Reign of the *Saxons* the most notable Example was given by

King *Alfred*, who caus'd above forty Judges to be hanged in a Short Space, for several wrongs done to the People, as is related in *the Mirror of Justice*: Some of them suffered for imposing upon Juries, and forcing them to give Verdicts according to their will; And one, as it seems, had taken the Confidence to examine a Jury, that he might find which of them would Submit to his will, and Setting aside him who would not, condemned a Man upon the Verdict of Eleven.

Since the Coming in of the *Normans*, our Parliaments have not been less severe against such Judges, as have suffered the course of Justice to be perverted, or the Rights and Liberties of the People to be invaded: *In* the time of *Edward* the 1st *Anno* 1289. The Parliament finding, That all the Judges (except Two) had swerv'd from their duty, condemned them to several punishments according unto their Crimes, As Banishment, Perpetual Imprisonment, or the Loss of all their Estates,

Ex Chron. Anno 10 Ed. 1.

states, &c. Their Particular Offences are specified in a speech made by the Arch-Bishop of *Canterbury* in Parliament. They had broken *Magna Charta*; Incited the King against his People; Violated the Laws under pretende of expounding them; And impudently presumed to prefer their own Councils to the King, before the Advices of Parliament, as appears by the speech, &c. Hereunto annext.

The like was done in *Ed.* the 2d Time when *Hugh De Spencer* was charged for having prevailed with the King to break his Oath to the People, in doing Things against the Law by his own Authority.

In *Edward* the 3d. Time Judge *Thorpe* was hanged for having in the like manner brought the King to break his Oath: And the happy Reign of that great King affords many Instances of the like nature, amongst which the punishment of Sr. *Henry Green* and Sr. *William Skipwith*, deserve to be observed

Dan. History p. 260, 261.

ed and put into an Equal rank with thoſe of his brave and victorious Grand-father.

In *Richard* the Second's Time, Eleven of the Judges, forgetting the dreadful Puniſhments of their Predeceſſors, ſubſcribed malicious Indictments againſt Law, and gave falſe Interpretations of our Antient Laws to the King, thereby to bring many of his moſt Eminent, & worthieſt Subjects, to ſuffer as Traytors at his Will: Subjected the Authority, and very being of Parliaments to his abſolute pleaſure, And made him believe, that all the Laws lay in his own breaſt: Hereupon ſentence of death paſſed upon them; and tho upon their repentance, and confeſſing, they had been ſwayed by fear, and threatnings from the King, Two only were Executed, all the others, were for ever baniſhed, as unworthy to enjoy the benefit of that Law, which they had ſo perfidiouſly, and baſely betrayed.

See all the *Engliſh* Hiſtories of *Walſingham*, *Fabian*, *Speed*, &c. in the 11 and 21 years of *Richard* the 2d.

It were an Endleſs work to recite all the Examples of this kind that are found in our Hiſtories and Records; but that of *Empſon* and *Dudley* muſt not be omitted: They had craftily contrived to aboliſh Grand Juries and to draw the Lives and Eſtates of the People into queſtion, without Indictments by them; and by ſurpriſe, and other wicked practices, they gained an Act of Parliament for their countenance: Hereupon falſe Accuſations followed without number; Oppreſſion and Injuſtice broke forth like a Flood, And to gain the Kings Favor, they filled his Coffers: The Indictments againſt them mentioned in *Anderſon's* Reports, Pa. 156. 157. are worth reading; whereby they are charged *with Treaſon, for Subverting the Laws, and Cuſtoms of the Land, in their proceedings without Grand Juries, and procuring the murmuring & hatred of the People againſt the King, to the great danger of him, & the Kingdom.* Nothing could ſatisfy the Kingdom, tho the King was dead, whom they had flattered, and

ſerved,

ſerved, but ſuch Juſtice done upon them, and many of their Inſtruments, and Officers, as may for ever make the Ears of Judges to tingle.

And it is not to be forgotten, that the Judges in Queen *Eliz.* time, in the Caſe of R. *Cavendiſh* in *Anderſon's* Reports P. 152, and 155. *were* (as they told the Queen, and her Councellors) *by the puniſhment of former Judges, & ſpecially of* Empſon *and* Dudley, *deterred from obeying her illegal Commands:* The Queen had ſent ſeveral Letters under her Signet; Great Men preſſed them to obey her Patent under the Great Seal, and the Reaſons of their diſobedience being required; They anſwered, *That the Queen her ſelf, and the Judges, alſo had taken an Oath to keep the Laws; And if they ſhould obey her Commands, the Laws would not warrant them, and they ſhould therein break their Oath, to the Offence of God, and their Country, and the Common-wealth wherein they were born; And,* ſay they, *if we had no fear of God, yet the Exam-*

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ples, and puniſhments of others before us, who did offend the Laws, do remember, and recal us from the like Offences.

Whoſoever being in the like places may deſign, or be put upon the like practices, will do well to conſider theſe Examples, and not to think, that he, who obliquely Endeavors to render Grand Jury's uſeleſs, is leſs Criminal, than he, that would abſolutely aboliſh them: That which doth not act according to its Inſtitution, is, as if it were not in being: And whoever doth without prejudice conſider this matter, will ſee that it is not leſs pernicious to deny Juries the uſe of thoſe Methods of diſcovering Truth which the Law hath appointed, and ſo by degrees turn them into a meer matter of form, than openly, and avowedly to deſtroy them. Surely ſuch a gradual Method of deſtroying our Native Right is the moſt dangerous in its conſequence. The ſafety, which our Fore-fathers for many hundreds of years, enjoyed under this part of the Law eſpecially;

and

and have tranſmitted to us, is ſo apparent to the meaneſt Capacity, that whoever ſhall go about to take it away, or give it up, is like to meet with the fate of *Iſhmael*, to have every mans hand againſt him, becauſe his is againſt every Man. Artifices of this Kind, will ruine us more ſilently, and ſo with leſs oppoſition, and yet as certainly, as the other more moved oppreſſion: This only is the difference, that one way we ſhould be ſlaves immediately, and the other inſenſibly; But with this further diſadvantage too, that our ſlavery ſhould be the more unavoydable, and the faſter rivited upon us, becauſe it would be under colour of Law, which Practice in Time would obtain.

Few men at firſt ſee the danger of little changes in Fundamentals, and thoſe, who deſign them, uſually act with ſo much craft, as beſides the giving ſpecious Reaſons, they take great Care, that the true Reaſon ſhall not appear: Every deſign therefore of changing the Conſtitution ought to be moſt warily obſerved

ſerved, and timely oppoſed; Nor is it only the Intereſt of the People, that ſuch Fundamentals ſhould be duly guarded, for whoſe benefit they were at firſt ſo carefully layed, and whom the Judges are ſworn to ſerve; but of the King too, for whoſe ſake thoſe pretend to act, who would ſubvert them.

Our Kings as well as Judges are ſworn to maintain the Laws; They have themſelves in ſeveral Statutes required the Judges, at their peril, to adminiſter Equal Juſtice to every Man, notwithſtanding any Letters, or Commands, &c. even from themſelves to the contrary; And when any failure hath been, the greateſt, and moſt powerful of them have ever been the readieſt to give Redreſs. It appears by the preface to the Statutes of 20th *Ed.* 3. that the Judicial proceedings had been perverted, That Letters writs and Commands had been ſent from the King, and great Men to the Juſtices, and that Perſons belonging to the Court of the King, the Queen, the Prince of *Wales* had maintained, & abetted Quarrels

rels, &c. Whereby the Laws had been violated, and many wrongs done: But the King was so far from justifying his own Letters, or those illegal practices; That the preamble of those Statutes saith, they were made for the relief of the People in their sufferings by them. That brave King in the height of his glory, and vigor of his Age, chose rather to confess his Error, than to continue in it, as is Evident by his own words. Edward *by the Grace of God, &c. Because by divers Complaints made unto us, we have perceived that the Law of the Land, which we by our Oath are bound to maintain, is the less well kept, and* Execution *of the same disturbed many times by maintenances and procurements, as well in the Court, as the Country, We greatly moved of Conscience in this matter, and for this Cause, desiring as much for the pleasure of God, and ease and quietness of our Subjects, as to save our Conscience, and for to save and keep our said Oath, by the Assent, &c. Enact, That Judges*

shall

shall do Justice, notwithstanding Writs, Letters or Commands from himself, &c. *and that none of the King's House, or belonging to the King, Queen, or Prince of Wales do maintain Quarrells*, &c.

King *James* in his Speech to the Judges in the *Starchamber Anno.* 1616. told them; *That He had after many years resolved to renew his Oath, made at his Coronation, concerning Justice and the promise therein contained for maintaining the Law of the Land.* And in the next Page save one says, *I was sworn to maintain the Law of the Land, and therefore had been perjured, if I had broken it; God is my Judge I never intended it.* And His Majesty, that now is, hath made frequent Declarations, and Protestations of his being far from all thoughts of designing an Arbitrary Government, and that the Nation might be confident, He would rule by Law.

Now if after all this, any Officer of the Kings should pretend Instructions from his Master, to demand so material an Alteration of proceedings, in the high-

eſt Caſes againſt Law, as are above mentioned, And the Court (who are required to ſlight and reject the moſt ſolemn Commands under the Great Seal, if contrary to Law) ſhould upon a Verbal Intimation allow of ſuch a Demand, and ſo break in upon this Bulwark of our Liberties, which the Law has erected; Might it not give too juſt an occaſion to ſuſpect, that all the legal ſecurities of our Lives, and Properties are unable to protect us? And may not ſuch fears rob the King of his greateſt Treaſure, and Strength, the Peoples hearts, when they dare not rely upon Him in His Kingly Office, and truſt, for ſafety and Protection by the Laws? Our *Engliſh* Hiſtory affords many Inſtances of thoſe that have pretended to ſerve our King in this manner, by undermining the Peoples Right, and Liberties, whoſe practices have ſometimes proved of fatal conſequence to the Kings themſelves, but more frequently ended in their own deſtruction.

But after all imagining it could be

made out, that this Method of private Examinations by a Grand Jury (which from what has been ſaid before, hath appeared to be ſo Extremely neceſſary for the publick good, and to every private mans ſecurity) were inconvenient, or Miſchievous, and therefore fit to be changed; Yet being ſo Eſſential a part of the Common Law, it is no otherwiſe alterable, than by Parliament. We find by Preſidents, that the bare forms of Indictments could not be reformed by the Judges: The words *Depopulatores agrorum, Inſidiatores viarum, Vi et Armis, Baculis, Cultellis, Arcubus & ſagittis,* could not be left out, but by Advice of the Kingdom in Parliament. A writ iſſued in the Time of K. *Ed.* 3. giving Power to hear and determine Offences, and all the Juſtices reſolved (*Cok.* 4. Inſt. Pag. 164.) *That they could not lawfully act, having their Authority by Writ, where they ought to have had it by* Commiſſion; *Tho it was in the form and words, that the Legal* Commiſſion *ought to be.* John Knivett *Chief Juſtice by Ad-*

vice of all the Judges reſolved that the ſaid Writ was Contra Legem: *And where divers Indictments were before them found againſt* T.S. *the ſame, & all, that was done by colour of that Writ, was Damned.*

If in ſuch ſeeming little Things as theſe, and many others, that may be inſtanced, the Wiſdom of the Nation hath not thought fit to intruſt the Judges, but reſerved the Conſideration of them to the Legiſlative Power; It cannot be imagined, that they ſhould ſubject to the diſcretion, and pleaſure of the Judges, thoſe important Points, in the Eſtabliſhed courſe of the adminiſtring Juſtice, whereupon depends the ſafety of all the Subjects Lives, and fortunes. If Judges will take upon themſelves to alter the conſtant practice, they muſt either alter the Oath of the Grand Jury, or continue it; If they ſhould alter it, ſo as to make it ſail with any ſuch new Method, and thus in appearance charitably provide, that the Grand Jury ſhould not take a mock Oath, or for-

ſwear themſelves; they then make an Incroachment upon the Authority of Parliaments, who only can make new, or change old Legal Oaths, and all the proceedings thereupon would be void.

If they ſhould continue conſtantly to impoſe the ſame Oath, as well when they have notice from the King, that the Jury ſhall not be bound to keep his Secrets, and their own, as when they have none; They muſt aſſume to make the ſame form of Law to be of force, and no force; and the ſame words to bind the Conſcience, as they will have them; Whereby they would prophane the Natural Religion of an Oath, and bring a foul Scandal upon Chriſtianity, by trifling worſe than Heathens in that ſacred matter; And whilſt the Judges find themſelves under the neceſſity of adminiſtring the Oath unto Grand Juries, and not ſuffer them to obſerve it according unto their conſciences, they would confeſs the illegality of their own Proceedings, and can never be able to repair the Breaches, by pretending a

tacite Implication, if the King will, but muſt unavoidably fall under that approved Maxim of our Law, *Maledicta eſt Interpretatio quæ corrumpit Textum*; It is a Curſed Interpretation that diſſolves the Text.

There are Two Vulgar Errours concerning the duty of Grand Juries, which if not removed will in Time deſtroy all the benefit we can expect from that Conſtitution, by turning them into a meer matter of form, which were deſigned for ſo great Ends. Many have of late, thought, and affirmed it for Law, that the Grand Jury is neither to make ſo ſtrict Inquiry into matters before them Nor to look for ſo clear Evidence of the Crime, as the Petit Jury; but that of their Preſentments, being to paſs a ſecond Examination, they ought to indict upon a Superficial Inquiry, and bare Probabilities: Whereas ſhould either of theſe Opinions be admitted, the Prejudice to the ſubject would be equal to the total laying aſide Grand Juries; There being in Truth no difference, between arraign-

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ing without any Preſentment from them at all, and their Preſenting upon ſlight grounds.

For the firſt, that Grand Juries ought not to make ſo Strict Inquiry, it were to be wiſht, that we might know how it comes to paſs, that an Oath ſhould be obligatory unto a Petit Jury, and not unto the Grand: Or in what Points, they may lawfully, and with good Conſcience omit that Exactneſs, whether in Relation to the Witneſſes, and their credibility: Or the fact and all its circumſtances: Or the Teſtimony and its weight: Or laſtly, in Reference to the Priſoner, and Probability of his guilt: And withal upon what grounds of Law, or Reaſon their Opinion is founded. On the contrary he that will conſider either the Oath they take, or the Commiſſion, where their duty is deſcribed, will find in all Points, that there lies an Equal obligation upon them, and the Petit Juries.

They ſwear diligently to inquire, and true Preſentment make, &c. and to Pre-

ſent the Truth, the whole Truth, and Nothing but the Truth, &c. And in the Commiſſion of *Oyer & Terminer* their duty (with that of the Commiſſioners) is thus deſcribed: *Ad Inquirendum per Sacramentum Proborum & legalium Hominum*, &c. *per quos rei veritas melius ſciri poterit, de quibuſcunq; proditionibus*, &c. *conſœderationibus, Falſis allegantiis, nec non Acceſſoriis Eorundem*, &c. *per quoſcunq; & qualitercunq; habit. fact. perpetrat. ſive* Commiſſ. *Et per quos, Et per quem, cui, vel quibus quando, qualiter, vel quomodo, & de aliis articulis & Circumſtantiis præmiſ. & eorum aliquod. vel aliqua qualitercunq; concernen. To inquire by the Oath of honeſt and lawful Men*, &c. *By whom the Truth of the matter may be beſt known, of all manner of Treaſons* &c. Confederacies, *falſe Teſtimonies*, &c. *As alſo the Acceſſories*, &c. *by whomſoever, or howſoever, done, perpetrated, or committed, by whom, or to whom, how, in what way, or in what manner. And of other Articles and Circumſtances premiſed,*

miſed, and of any other Thing or Things howſoever concerning the ſame: Now for any Man, after this to maintain, that Grand Juries are not to inquire, or not careſully, is as much as in plain terms to ſay they are bound to act contrary to the Commiſſion, and their Oath; And to affirm that they can diſcharge their duty according to the obligations of Law and Conſcience, which they lie under, without a ſtrict Inquiry into Particulars, is to affirm, that the End can be obtained without the means neceſſary unto it.

The Truth is, that Grand Juries have both a larger field for their Inquiry, and are in many reſpects better capacitated to make a ſtrict one, than the Petit Juries: Theſe laſt are confined as to the Perſon and the Crime, ſpecified in the Indictment; But They are at large obliged to ſearch into the whole matter, that any ways concerns every caſe before them, and all the Offences contained in it, all the Criminal Circumſtances whatſoever, and into every Thing, how-

ſoever concerning the ſame. They are bound to inquire whether their Information of Suſpected Treaſons or Felonies, brought by Accuſers, be made by Conſpiracy, or Subornation; Who are the Conſpirators, or falſe Witneſſes: By whom abetted, or maintained; Againſt whom, and how many, the Conſpiracy is layed; When, and how, and in what courſe, it was to have been proſecuted.

But none of theſe moſt intricate matters (which need the moſt ſtrict and diligent Inquiries) can come under the Cogniſance of the Petit Jury; They can only examine ſo much, as relates to the Credit of thoſe Witneſſes brought to prove the Charge againſt the Parties, Indicted; Wherein alſo they have neither Power, nor convenient time to ſend for perſons, or Papers, if they think them needful, Nor to reſolve any doubts of the Lawfulneſs, and Credibility of the Teſtimonies.

Yet further, if the Crimes objected are manifeſt, 'tis then the Grand Juries duty to inquire after all the Perſons any ways

ways concerned in them, and the ſeveral Kinds of Offences, whereof every one ought joyntly, or ſeparately to be indicted as they ſhall diſcover them to have been Principals, or Acceſſories Parties or privy thereunto, or to have comforted, or Knowingly relieved either the Traitors or Felons, or conceal'd the offences of others: But the Inquiſition into all theſe matters, which require all poſſible ſtrictneſs in ſearching, as being of the higheſt importance unto the publick Juſtice, and ſafety, is wholly out of the Power & Truſt of the Petit Juries. The guilt, or Innocence of the Parties put upon their Tryals, & the Evidence thereof given is the only Objects of their Inquiries. It is not their work, nor within their truſt to ſearch into all the guilt, or Crimes of the Parties, whom they try; They are bound to move within the Circle of the Indictment made by the Grand Jury, who are to appoint, and ſpecify the offences, for which the Accuſed ſhall be tried by the Petit Jury.

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When a Profecutor ſuggeſts that any Man is criminal, and ought to be indicted, it belongs to the Grand Jury to hear all the proof he can offer, & to uſe all other means they can, whereby they may come to underſtand the Truth of the ſuggeſtion & every thing or circumſtance, that may concern it; Then they are carefully to examine the nature of the Facts, according unto the Rules of the Com. Law, or the expreſs words of the Statutes, whereby offences are diſtinguiſhed, and puniſhments allotted unto each of them: Tis true, that upon hearing the Party, or his Witneſſes, the Petit Jury may acquit or judge the Facts in the Indictment to be leſs heinous, or malitious, then they were preſented by the Grand Jury, but cannot aggravate them; which being conſidered, it will Eaſily appear by the intent and Nature of the Powers given unto Grand Juries, that they are by their Oaths obliged, and their inſtitution ordained to keep all injuſtice from entring the firſt gates of our Courts of Judicature, and to ſecure

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the innocent not only from punishment, but from all disgrace, vexation, Expence or danger.

To understand our Law clearly herein, the Jurors must first know the lawful grounds whereupon they may and ought to indict, and then what truly and justly ought to be taken for the ground of an Indictment. The principal and most certain is the Jurors personal knowledge, by their own Eyes or Ears, of the Crimes whereof they indict: Or so many pregnant concurring Circumstances, as fully convince them of the guilt of the Accused: When these are wanting the Depositions of Witnesses and their Authority are their best guides in finding Indictments. When such Testimonies make the charge manifest and clear to the Jury, they are called Evidence, because they make the guilt of the Criminal evident, and are like the Light that discovers what was not seen before: All Witnesses for that reason are usually called the Evidence, taking their name from what

they

they ought to be: Yet Witneſſes may ſwear directly and poſitively to an Accuſation, and be no Evidence of its truth to the Jury; ſometimes ſuch Remarks may be made upon the Witneſſes, as well in relation to their Reputation and Lives, as to the Matter, Manner, and Circumſtance of their Depoſitions, that from thence the falſhood may appear, or be ſtrongly ſuſpected: It is therefore neceſſary to know what they mean by a probable Cauſe or Evidence, who ſay that our Law requires no more for an Indictment.

Probable, is a Logical Term, relating to ſuch propoſitions, as have an appearance, but no certainty of Truth, ſhewing rather what is not, than what is the matter of Syllogiſms: Theſe may be allowed in Rhetorick, which worketh upon paſſions, and makes uſe of ſuch Colors as are fit to move them, whether true or falſe; but not in Logick, whoſe Object is Truth; as it principally intends to obviate the Errours that may ariſe from the credit given unto appearances, by

diſtinguiſhing

diſtinguiſhing the uncertain from the certain, *veriſimile à vero*, it cannot admit of ſuch Propoſitions, as may be falſe as well as true, it being as impoſſible to draw a certain concluſion from uncertain premiſes, as to raiſe a ſolid Building upon a tottering or ſinking Foundation. This ought principally to be conſidered in Courts of Juſtice, which are not erected to bring men into condemnation, but to find who deſerves to be condemned, and thoſe Rules are to be followed by them, which are leaſt liable to deception. For this Reaſon the Council of the *Areopagites*, and ſome others of the beſt Judicatures that have been in the World, utterly rejected the uſe of Rhetorick, looking upon the Art of perſuading by uncertain probabilities, as little differing from that of deceiving, & directly contrary to their ends, who by the knowledge of truth deſired to be led into the doing of Juſtice: But if the Art that made uſe of their probabilities was baniſht from uncorrupted Tribunals, as a hindrance un-

to the diſcovery of Truth, they that would ground Verdicts totally upon them, declare an open neglect of it; and as it is ſaid, that *uno abſurdo dato mille ſequuntur*, if Juries were to be guided by probabilities, the next queſtion would be concerning the more or leſs probable, or what degree of probability is required to perſuade them to find a Bill: This being impoſſible to fix, the whole Proceedings would be brought to depend upon the Fancies of Men, and as nothing is ſo ſlight but it may move them, there is no ſecurity that innocent Perſons may not be brought every day into danger and trouble. By this means certain miſchiefs will be done, whilſt it is by their own confeſſion uncertain, whether they are any ways deſerved by ſuch as ſuffer them, to the utter overthrow of all Juſtice.

If the word *Probable* be taken in a common, rather than a nice Logical ſenſe, it ſignifies no more than likely, or rather likely than unlikely: When a

matter

matter is found to be ſo, the Wager is not even, there is odds upon one ſide, and this may be a very good ground, for betting in a Tennis Court, or at a Horſe race, but he that would make the Adminiſtration of Juſtice to depend upon ſuch Points, ſeems to put a very ſmall value upon the Fortunes, liberties and reputation of men, and to forget that thoſe who ſet in Courts of Juſtice have no other buſineſs there than to preſerve them.

This continues in force, tho in a Dialogue between a Barriſter, and a Grand Jury man, publiſhed under the Title of the Grand Jury Mans Oath and Office, it be ſaid p. 8. and 9. *That their work is no more than to preſent Offences fit for a Tryal, and for that Reaſon, give in only a Veriſimilar or probable charge; and others have affirmed, that a ſubleſs Evidence will warrant a Grand Juries Indictment, than a petit Juries Verdict.* For Nothing can be more oppoſite to the Juſtice of our Laws, than ſuch Opinions: All Laws in doubtful Caſes direct

a ſuſpenſion of Judgment, or a ſentence in favour of the Accuſed perſon: But if this were hearkened unto, Grand Juries ſhould upon their Oaths affirm, they judge him Criminal, when the Evidence is upon ſuch uncertain grounds that they cannot but doubt, whether he is ſo or not.

It cannot be hereupon ſaid, that no Evidence is ſo clear and full, but it may be falſe, and give the Jury occaſion of doubts, ſo as all Criminals muſt eſcape, if no Indictment ought to be found unleſs the proofs are abſolutely certain, for it is confeſſed, that ſuch Caſes are not capable of an infallible, Mathematical demonſtration; but a Jury, that Examines all the Witneſſes, that are likely to give any Light concerning the buſineſs in queſtion, and all Circumſtances relating to the fact before them, with the Lives and Credit of thoſe that teſtify it, and of the Perſon accuſed, may and do often find that which in their Conſciences, doth fully perſwade them, that the accuſed Perſon is guilty; This

is as much as the Law, or their Oath doth require, and ſuch as find bills, after having made ſuch a Scrutiny, are blamleſs before God, and Man, if through the fragility inſeparable from humane nature, they ſhould be led into Error? For they do not ſwear, that the bill is true, but that they in their Conſciences believe that it is ſo; And if they write *Ignoramus* upon the Bill, it is not thereby declared to be falſe, nor the Perſon accuſed acquitted, but the matter is ſuſpended, until it can be more clearly proved, as in doubtful Caſes, it alwaies ought to be.

Our Anceſtors took great Care that ſuſpicious, and probable Cauſes ſhould not bring any Mans Life, and Eſtate into danger; For that reaſon, it was ordained by the Stat. 37. *Ed.* 3. Cap. 18. *That ſuch as made ſuggeſtions to the King, ſhould find ſurety, to purſue and incur the ſame pain, that the other ſhould have had if he were attainted; in caſe their ſuggeſtion be found evil, & that then proceſs of the Law ſhould be made againſt the Accuſed.*

This manner of Proceeding, hath its root on eternal, and univerſal Reaſon. The Law, given by God unto his People, *Deut.* 19. allotted the ſame Puniſhment unto a falſe witneſs, as a Perſon convicted. The beſt diſciplined Nations of the world, learnt this from the Hebrews, and made it their Rule, in the adminiſtration of Juſtice. The Grecians generally obſerved it, and the *Romans*, according to their *Lex Talionis*, did not only puniſh death with death, but the intention of committing Murther by falſe Accuſations, with the ſame ſeverity, as if it had been effected by any other means. This Law was inviolably obſerved as long as any thing of regularity or equity remained amongſt them; and when through the wickedneſs of ſome of the Emperours, or their favourites, it came to be overthrown, all Juſtice periſhed with it. A Crew of falſe Informers brake out to the deſtruction of the beſt men, and never ceaſed until they had ruined all the moſt eminent and antient Families: Circumvented

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the Perſons, that by their Reputation, Wealth, Birth or Virtue deſerved to be diſtinguiſhed from the common ſort of People, and brought deſolation, upon that victorious City. *Tacitus* complains of this, as the cauſe of all the miſchiefs ſuffered in his Time, and Country. *Tac. Ann.* 3.

By their means the moſt Savage Cruelties, were committed under the name of Law, which thereby became a greater Plague, than formerly crimes had been: No remedy could be found, when thoſe *Delatores*, whom he calls, *genus hominum Publico exitio repertum, & pœnis quidem nunquam ſatis coercitum*, were invited by impunity, or reward, and the Miſerable People groaned under this calamity, until thoſe inſtruments of iniquity, were by better Princes, put to the moſt cruel, though well deſerved deaths. *Tac. Ann.* 4.

The like hath been ſeen in many Places, and the domeſtick quiet, which is now enjoyed in the Principal parts of *Europe*, proceeds chiefly from this,

that every man knows the ſame Puniſhment, is appointed for a falſe Accuſation, and a proved crime.

It is hardly ſeven years ſince Monſieur *Courboyer*, a man of quality in *Brittany*, ſuborned two of the King of *France* his Guards, to ſwear Treaſonable Deſigns againſt *La Motte*, a *Norman* Gentleman; The matter being brought to Monſieur *Colebert*, he cauſed the Accuſed Perſon and the witneſſes to be ſecured, until the fraud was diſcovered by one of them, whereupon he was pardoned: *La Motte* releaſed: *Courboyer* beheaded, and the other falſe Witneſs hanged by the Sentence of the Parliament of *Paris*. Though this Law ſeems to be grounded upon ſuch foundation, as forbids us to queſtion the equity of it, our Anceſtors (for Reaſons beſt known unto themſelves) thought fit to moderate its Severity, by the Statute of 38. *Ed.* 3. *Cap.* 9. yet then it was enacted, and the Law continues in force unto this day; *That whoſoever made complaints to the King, and could*

not

not prove them againſt the defendant, by the proceſs of Law limited in former Statutes, which is firſt by a Grand Jury, he *ſhould be impriſoned until he had made gree to the Party of his damages, and of the ſlander he ſuffered by ſuch occaſion, and after ſhall make fine and ranſom to the King*, which is for the Common damage, that the King and his People ſuffer by ſuch a falſe accuſation and defamation of any Subject: And in the 42. *Ed.* 3. *Cap* 3. *To eſchew the Miſchiefs and damage done by falſe Accuſers* 'Tis enacted, that *no man be put to anſwer* ſuch ſuggeſtions *without preſentment before the Juſtices, i. e.* by the Grand Jury: It cannot ſurely be imagined, that the ſuggeſtions made to the King and his Council, had no probability in them, Or that there was no colour, cauſe, or Reaſon for the King to put the party to anſwer the Accuſation, but the grievance and complaint was, that the People ſuffered certain damage, and vexation upon untrue, and at beſt, uncertain accuſations, and that therein the

Law was perverted by the King and his Councils taking upon them, to judge of the certainty, or Truth of them, which of right belonged to the Grand Jury only, upon whose Judgment and Integrity our Law doth wholly rely, for the indemnity of the Innocent, and the punishment of all such as do unjustly molest them.

Our Laws have not thought fit so absolutely to depend upon the Oaths of Witnesses, as to allow, that upon Two, or Ten mens swearing positively Treason or Felony against any Man, before the Justices of peace, or all the Judges, or before the King and his Council, that the party accused, be he either Peer of the Realm, or Commoner, should without further Inquiry be thereupon arrained, and put upon his Tryal for his Life: Yet none can doubt but there is something of probability in such depositions nevertheless the Law Refers those matters unto Grand Juries, and no man can be brought to Tryal, until upon such strict Inquiries, (as is be-

fore

fore ſaid) the Indictment be found. The Law is ſo ſtrict in theſe Inquiries, that tho the Crime be never ſo notorious, nay if Treaſon ſhould be confeſſed in Writing under hand and ſeal, before Juſtices of Peace, Secretaries of State, or the King and Council, yet before the party can be arrained for it, the Grand Jury muſt inquire, and be ſatisfied, whether ſuch a Confeſſion be clear and certain: Whether there was no colluſion therein: Or the party induced to ſuch confeſſion by promiſe of pardon: Or that ſome pretended partakers in the Crime may be defamed, or deſtroyed thereby; They muſt inquire, whether the Confeſſion was not extorted by fear, threatnings, or force, and whether the party was truly *Compos mentis*, of ſound mind, and Reaſon at that Time.

The *Stat.* 5. *Eliz.* Cap. 1. declares the antient Common Law concerning the Truſt and dury of Juries, and Enacts that none ſhould *be indicted for aſſiſting, aiding, comforting, or abetting* Criminals in the Treaſons therein made and declared

clared, unleſs he, or they be thereof lawfully accuſed by ſuch good and ſufficient Teſtimony or proof, as by the Jury, by whom he ſhall be indicted, ſhall be thought good, lawful, and ſufficient to prove him, or them guilty of the Said Offences. Herein is declared, the only True Reaſon of Indictments, *i. e.* the Grand Juries Judgment that they have ſuch Teſtimonies as they eſteem ſufficient to prove the party indicted guilty of the Crimes whereof he is accuſed, and whatſoever the Indictment doth contain, they are to preſent no more, or other Crimes, than are proved to their ſatisfaction, as upon Oath they declare it is, when they preſent it. This exactneſs is not only required in the Subſtance of Crimes, but in the Circumſtances, and any doubtfulneſs, or uncertainty in them makes the Indictment, & all proceedings upon it by the Petit Jury, to be inſufficient, and void, and holden for none, as appears by the following Caſes.

In *Youngs* Caſe in the Lord *Cooks* Reports *Lib.* 4. *Fol.* 40. An Indictment for

Murther

Murther was declared void for its incertainty, becauſe the Jury had not layed certainty, in what part of the body the mortal wound was given, ſaying only, that 'twas about his breaſt, the words were *Unam Plagam mortalem circiter pectus.* In like manner in *Vaux* Caſe *Cooks* Rep. *Lib.* 4. *Fol.* 44. he being indicted for poiſoning *Ridley*, the Jury had not plainly and expreſly averred that *Ridley* drank the Poiſon, tho other words implyed it, and thereupon the Indictment was judged inſufficient *for* (ſaith the book) *the matter of an Indictment ought to be full, expreſs, and certain, and ſhall not be maintained by argument or implication, for that the Indictment is found by the Oath of the Neighborhood.* In the 2d part of *Rolls* Reports *p.* 263. *Smith* and *Malls* Caſe the Indictment was quaſhed for incertainty, becauſe the Jury had averred that *Smith* was either a ſervant or Deputy, *Smith Exiſtens ſervus ſive Deputatus*, are the words: It was doubtleſs probably enough proven to the Jury, that he was

Either

Either a Depury, or ſervant, but becauſe the Indictment did not abſolutely and certainly aver his condition Either of ſervant, or Depury, it was declared void: If there be any defect of certainty in the Grand Juries Verdict, no proof or Evidence to the Petit Jury can ſupply it, ſo it was judged in *Wrote* and *Wigs* Caſe *Coke* 4. Rep. *Fol.* 45, 46, 47. It was layed, that *Wrote* was killed at *Shipperton*, but did not aver that *Shipperton* was within the *Verge*, tho in truth it was, and no Averment or Oath to the Petit Jury, could ſupply that ſmall faileur of certainty to ſupport the Indictment; and the reaſon is rendred in theſe words, *viz. The Indictment being Veredictum id eſt dictum Veritatis a Verdict, That is, a ſaying of Truth and matter of Record, ought to contain the whole Truth which is requiſite by the Law, for when it doth not appear, 'tis the ſame, as if it were not, and every material part of the Indictment ought to be found upon the Oath if the Indicters and cannot be ſupplied by the Averment of the Party.* The

Grand

Grand Juries Verdict is the foundation of all judicial proceeding againſt Capital Offenders (at the King ſuit) if that fail in any point of certainty, both convictions, and acquittals thereupon, are utterly void, and the proceedings againſt both may begin agen, as if they had never been tried, as it appears in the Caſe laſt cited, *Fol.* 47.

Now as the Law requires from the Grand Jury Particular, certain and preciſe affirmations of Truth, ſo it expects that they ſhould look for the like, and accept of no other from ſuch as bring accuſations to them. For no man can certainly affirm that which is uncertainly delivered unto him, or which he doth not firmly believe. The witneſſes that they receive for good, are to depoſe only abſolute certaintys about the Facts committed, That is, what they have ſeen, or heard from the accuſed parties themſelves, not what others have told them. They are not to be ſuffered to make probable arguments and infer from thence the guilt of the accuſed; Their depoſitions

depositions ought to be positive, plain, direct and full: The Crime is to be sworn without any doubtfulness, or obscurity; Not in words qualified, & limited to belief, conceptions, or apprehensions. This absolute certainty required in the deposition of the Witnesses, is one principal ground of the Juries most rational assurance of the Truth of their Verdict: The credit also of the Witnesses ought to be free from all blemish, that good, and Conscientious men may rationally rely upon them, in matters of so great moment, as the bloud of a man. It must also be certainly evident, that all the matters which they depose, are consistent with each other and accompanied with such circumstances, as in their Judgment render it credible: All just Indictments, must be built upon these moral assurances, which the wisdom of all Nations hath devised as the best, and only way of deciding Controversies; Neither can a Grand Jury man, who swears to present nothing but the Truth, be satisfied with less.

'Tis

'Tis ſcarce credible that any learned in our Laws, ſhould tell a Grand Jury that a far leſs Evidence will warrant their Indictment (being but an Accuſation) than the Petit Jury ought to have, for their Verdict. Both of them do in like manner, plainly, and poſitively affirm upon their Oaths, the Truth of the Accuſation; Their Verdicts are indeed one, and the ſame in ſubſtance, and ſenſe, tho not in words. There is no real difference, between affirming in Writing, that an Indictment of Treaſon is true, as is the practice of Grand Juries, and ſaying that the party tried thereupon is guilty of the Treaſon, whereof he is indicted, as is the courſe of Petit Juries. They are both upon their Oaths; They are equally obligatory into both; The one therefore muſt expect the ſame proof for their ſatisfaction, as the other, and as clear Evidence muſt be required for an Indictment, as for a Verdict; It is unreaſonable to think that a ſlighter proof, ſhould ſatisfie the Conſciences of the greater Jury, than is requiſite to

convince

convince the leſs; And uncharitable to imagin, that thoſe ſhould not be as ſenſible as the others of the Sacred ſecurity they have given by Oath, to do nothing in their Offices, but according to truth.

If there ought to be any difference in the Proceedings of the Grand and Petit Juries, the greater exactneſs and diligence ſeems to be required in the Grand: For as the ſame work of finding out the truth in order to the doing of Juſtice is allotted unto both, the greateſt part of the burthen, ought to lye upon them, that have the beſt opportunities of performing it. The Invalidity weakneſs, or defects of the Proofs may be Equally Evident to either of them: But if there be deceit in ſtifling true Teſtimonies, or malice in ſuborning wicked Perſons, to bring in ſuch as are falſe, the Grand Jury may moſt eaſily, may probably, can only diſcover it. They are not ſtraitned in time; They may freely examine in private, without interruption from the Counſel, or Court, ſuch Witneſſes, as are preſented unto them, or they

ſhall think fit to call; they may jointly or ſeverally enquire of their Friends or Acquaintance, after the Lives and Reputations of the Witneſſes, or the accuſed Perſons, and all circumſtances relating unto the matter in queſtion, and conſult together under the Seal of Secrecy: On the other ſide the Petty Jury being charged with the Priſoner, acts in open Court, under the Awe of the Judges: is ſubject to be diſturb'd, or interrupted by Council: Deprived of all opportunity of Conſulting one another, until the Evidence be ſumm'd up, and not ſuffered to eat or drink, until they bring in a Verdict; ſo is it almoſt impoſſible for them thus limited to diſcover ſuch evil practices, as may be uſed for, or againſt the Priſoner, by Subornation or Perjury to pervert Juſtice; if therefore the Grand Jury be not permitted to perform this part of their duty, it is hard to imagine how it ſhould be done at all: And it is much more inconceivable how they can ſatisfie their Conſciences, if they ſo neglect, as

to find a Bill upon an imperfect Evidence, in the abſence of the Priſoner, in Expectation that it will be ſupplied at the Bar: It concerns them therefore to remember, that if they proceed upon ſuch uncertainties, they will certainly give incurable Wounds into their Neighbours Reputations, in order unto the deſtruction of their Perſons.

Whatever ground this Doctrine of Indicting upon ſlight proofs may have got in our days, it is (as we have ſeen) both againſt Law and Reaſon, and contrary to the practice of former times. My Lord *Coke* in his *Comment* on *Weſtm.* 2d. tells us, *That in thoſe days (and as yet it ought to be) Indictments taken in the Abſence of the Party were formed upon plain and direct Proofs, and not upon Probabilities and Inferences.* Herein we ſee, that the practice of our Fore-Fathers, and the opinion of this great and judicious Lawyer, were directly againſt this new Doctrine, and ſome that have carefully looked backward, obſerved, that there are very

few

few Examples of men acquitted by Petit Juries, becauſe Grand Juries of old were ſo wary in canvaſing every thing narrowly, and ſo ſenſible of their Duty, in proceeding according unto truth upon Satisfactory Evidence, that few or none were brought unto Trial till their Guilt ſeemed evident.

It is therefore a great miſtake, to think that the ſecond Juries were inſtituted for the hearing of fuller proofs; That was not their work, but to give an opportunity to the accuſed perſons to anſwer for themſelves, and make their defence, which cannot be thought to ſtrengthen the Evidence, unleſs they be ſuppoſed to play booty againſt their own Lives. By way of anſwer the Priſoner may avoid the charge: He is permitted to take Exceptions; he may demur or plead to the Indictments in points of Law: Herein the Judges ought to aſſiſt him, and appoint Counſel if he deſire it: He may ſhew that the Indictors, *i. e.* the Grand Jury, or ſome of them, are not lawful

men, or not lawfully returned by the Sheriffs; embracery or practice may be proved in the packing of the Jury: A Conſpiracy, or Subornation may be diſcovered; Falſhood may be found out in the Witneſſes, by queſtions about ſome circumſtances that none could have asked, or imagined, except the Party accuſed: And beſides doing right to the Indicted, in theſe and many other things, 'tis the Peoples due to have all the Evidence firſt taken in private, to be afterwards made publick at the Trial, that the Kingdom may be ſatisfied in the equal adminiſtration of Juſtice, and that the Judgments againſt Criminals may be of greater Terrour, and more uſeful to preſerve the common peace.

If any object that this Doctrine would introduce double Trials for every offence, and all the delays that accompany them, it may be anſwered, That *Nulla unquam de morte hominis cunctatio Longa eſt*, Ju. Sat. No delay is to be eſteemed Long, when the life of

a man

a man is in queſtion. The puniſhment of an offendor, that is a little deferred, may be compenſated by its ſeverity, but blood raſhly ſpilt, cannot be gathered up, and a Land polluted by it, is hardly cleanſed. Wiſe, and good men, in matters of this nature, have ever proceeded with extream caution, whileſt the ſwift of foot are in the Scripture repreſented under an ill Character, and have been often found in their haſte to draw more guilt upon themſelves, than what they pretended to chaſtize in others. To avoid this miſchief, in many well poliſhed Kingdoms, ſeveral Courts of Juſtice are inſtituted, who take cognizance of the ſame facts, but ſo ſubordinate unto one another, that in matters of life, limb, liberty, or other important caſes, there is a right of appeal from the inferior, before which it is firſt brought, to the Superior, where this is wanting, means have been found to give opportunity unto the Judges to reflect upon their own ſentences, that if any thing had

been done raſhly, or through miſtake, it might be corrected, man, even in his beſt eſtate, ſeeming to have need of ſome ſuch helps. *Tiberius Cæſar* was never accuſed of too much lenity, but when he heard that *Lutorius Priſcus*, had been accuſed of Treaſon before the Senate, condemned, and immediately put to death, *Tam præcipites deprecatus eſt pœnas*, He deſired that ſuch ſudden puniſhment might for the future be forborn, and a Law was thereupon made, *That no Decree of the Senate ſhould in leſs than ten days be tranſmitted to the Treaſury*, before which time it could not be executed, *Tac. An.* 3. Matters of this nature concerning every man in *England*, it is not to be doubted but our Anceſtors conſider'd them, and our conſtitutions, neither admitting of ſubordinate Judicatures, from whence appeals may be made, nor giving opportunities unto Juries to re-examine their Verdicts, after they were given, they could not find a way more ſuitable unto the rules of Wiſdom, Juſtice,

ſtice, and Mercy, than to appoint two Juries with equal care, according unto different methods, the one in private, and at leiſure, the other publickly in the preſence of the party, and more ſpeedy to paſs upon every man, ſo as none can be condemned, unleſs he be thought guilty by them both, and it cannot be imagined, that ſo little time, as is uſually ſpent in Trials at the Bar, before a Petit Jury, ſhould be allowed unto one that pleads for his life, or unto them who are to be ſatisfied in their conſciences, unleſs it were preſumed, that the Grand Jury, had ſo well examined, prepared, and diſgeſted the matter, that the other may proceed more ſuccinctly, without danger of error.

Therefore let the Grand Juries faithfully perfom thei high Truſt, and neither be cheated nor frighted from their Duty: Let them purſue the good old way, ſince no Innovation can be brought in, that will not turn to the prejudice of the accuſed Peſons, and themſelves: Let them not be deluded

with frivolous Arguments, ſo as to invalidate a conſiderable part of our Law, and render themſelves inſignificant ciphers, in Expectation that Petit Juries will repair the faults they commit, ſince that would be no leſs than to fight one of the beſt fences that the Law provides for our Lives and Liberties, and very much to weaken the other.

When a Grand Jury finds a Bill againſt any perſon, they do all that in them lies to take away his Life, if the crime be capital, and it is ridiculous for them to pretend they relie upon the virtue of the Petit Jury, if they ſhew none in themſelves. They cannot reaſonably hope the other ſhould be more tender of the Priſoners concernments, more exact in doing Juſtice, or more careful in examining the Credit of the Witneſſes, when they have not only neglected their duty of ſearching into it, but added ſtrength unto their Teſtimony by finding a Bill upon it.

They cannot poſſibly be exempted from the blame of conſenting (at the leaſt)

leaſt unto the miſchiefs that may enſue, unleſs they uſe all the honeſt care that the Law allows to prevent them; nor conſequently avoid the ſtain of the blood that may be ſhed by their omiſſion, ſince it could not have been, if they had well performed their part before they found the Indictment, whereby the Party is expoſed to ſo many diſadvantages, that it is hard for the cleareſt Innocence to defend itſelf againſt them.

But when the one and the other Jury act as they ought, with courage, diligence, and indifference, we ſhall have juſt reaſon, with the wiſe Lord Chancellour *Forteſcue*, to celebrate that Law that inſtituted them. To congratulate with our Countrey men the happineſs we enjoy, whileſt our Lives lie not *at the mercy of unknown Witneſſes, hired, poor, uncertain, whoſe converſation or malice we are ſtrangers to, but Neighbours of Subſtance, of honeſt report, brought into Court by an honourable ſworn Officer; men who know the Witneſſes,*

Fort. de laud. Leg. Ang. cap. 26.

Witnesses, and their Credit, and are to hear them, and judge of them: That want no means for discloſing of Truth, and from whom nothing can be hid, which can fall within the compaſs of humane Knowledge.

FINIS.

Ex Chronico ab Anno 1272. 1 Ed. 1. ad An. 1317. 10. Ed. 2. Mſſ.

POſtquam Rex per ſpatium trium Annorum & amplius in partibus tranſmarinis remanſiſſet, & de partibus Vaſconiæ & Franciæ in Angliam rediiſſet, valde anxiatus & conturbatus fuit per quotidianum clamorem tam Clericorum quam Laicorum petentium ab eo congruum remedium apponi verſus Juſticiarios, & alios Miniſtros ſuos, de multimodis oppreſſionibus & gravaminibus contra bonas leges & conſuetudines regni illis factis; ſuper quo Dominus Edvardus Rex, per regale ſcriptum Vicecomitibus Angliæ præcipit quod in omnibus Comitatibus, Civitatibus, & Villis mercatoriis, publice proclamari facerent quod omnes qui ſeſe ſentient gravari venirent apud Weſtm. ad proximum Parliamentum, & ibi querimonias ſuas monſtrarent, ubi tam majores quam minores opportunum remedium & celerem juſtitiam recuperent, ſicut Rex

An. Dom. 2289. Annoq; Regni Regis Ed. 1. 18.

Certe ſcimus quam plurimos eorum qui judiciis ſub Ed. 1. præfuere viros quidem maximos & ævo in illo Juriſconſultos celeberrimos repetundarum & quod lites ſuas fecerant aliosq; præter Mini-

vinculo

After that the King for the ſpace of three Years and more, had remained beyond Sea, and returned out of Gaſcoign *and* France *into* England, *he was much vexed and diſturbed by the continual clamour both of the Clergy and Laity, deſiring to be relieved againſt the Juſtices, and other His Majeſties Miniſters, of ſeveral oppreſſions and injuries done unto them, contrary to the good Laws and cuſtoms of the Realm; whereupon King* Edward, *by his Royal Letters to the ſeveral Sheriffs of* England, *commanded that in all Counties, Cities, and Market Towns, a Proclamation ſhould be made, that all who found themſelves agrieved ſhould repair to* Weſtminſter *at the next Parliament, and there ſhew their grievances, where as well the great as the leſs ſhould receive fit remedies and ſpeedy Juſtice, according as the King was obliged by the Bond of his Coro-*

nation

ſtros, forenſes aliquot merito damnatos multos exitia & carcere punitos. Ex Seldein ad Fletam diſſertatio. P. 548.

vinculo juramenti die Coronationis ſuæ aſtrictus fuit: Ac jam adeſt magnus dies & judiciarius Juſticiorum & aliorum Miniſtrorum Concilii Regis, quem nulla tergiverſatione, nullo munere, nulla arte vel ingenio placitandi valent eludi. Coadunatis itaque Clero & Populo & in magno Palatio Weſtmonaſterii conſeſſis, Archiepiſcopus Cantuarienſis (vir magnæ pietatis & columna quaſi ſanctæ Eccleſiæ & Regni) ſurrexit in medio, & ab alto ducens ſuſpiria, Noverit univerſitas veſtra (ait) quod convocati ſumus de magnis & arduis negotiis regni (heu nimis perturbati & his diebus enormiter mutilati) unanimiter, fideliter, & efficaciter ſimul cum Domino Rege ad tractandum & ordinandum, audiviſtis etiam univerſi querimonias graviſſimas ſuper intolerabilibus injuriis & oppreſſionibus & quotidianis deſolationibus, tam ſanctæ Eccleſ. quam Reg. factis

Vide Fleta Caſ. 17. p. 18, 19. Authoritas & Officium ordinarii Con-

per

nation Oath: And now that great day was come, that day of judging, even the Juſtices and the other Miniſters of the Kings Councel, which by no Colluſion or Reward, no Argument or Art of Pleading they could elude or avoid: The Clergy therefore and the People being gathered together and ſeated in the great Palace of Weſtminſter, *the Archbiſhop of* Canterbury (a man of eminent Piety, and as it were a Pillar of the holy Church & the Kingdom) *riſing from his Seat, and fetching a profound ſigh, ſpake in this manner: Let this Aſſembly know that we are called together concerning the great and weighty Affairs of the Kingdom (too much alas of late diſturbed, and ſtill out of Order) unanimouſly, faithfully and effectually with our Lord the King to treat and ordain: Ye have all heard the grievous complaints of the moſt intollerable injuries and oppreſſions of the daily deſolations committed both on Church and State, by this corrupt Councel of*

cilii Regis. per hoc iniquum Concilium Domini Regis contra magnas Chartas tot, toties & multoties emptas & redemptas, conceſſas & confirmatas per tot & talia Juramenta Domini Regis nunc, & Dominorum Henrici & Johannis, ac per terribiles fulminationes Excommunicationis ſententiæ in tranſgreſſores communium libertatum Angliæ, quæ in chartis prædictis continentur corroboratas, & cum ſpes præconcepta de libertatibus illis obſervandis fideliter ab omnibus puraretur ſtabilis & indubitata, Rex conciliis malorum Miniſtrorum prævenius & ſeductus eaſdem infringendo contravenire non formidavit, credens deceptive pro munere abſolvi à tranſgreſſione quod eſſet manifeſtum regni exterminium.

Aliud etiam nos omnes angit intrinſecus quod Juſticiarii ſubtiliter ex malitia ſua ac per diverſa argumenta avaritiæ, & intolerabilis ſuperbiæ Regem contra fideles ſuos multipliciter provocaverunt

our Lord the King, contrary to our great Charters, ſo many and ſo often, purchaſed and redeemed, granted and confirmed to us by the ſeveral Oaths of our Lord the King that now is, and of our Lords King Henry *and* John, *and corroborated by the dreadful thundrings of the ſentence of Ecommunication againſt the Invaders of our common Liberties of* England *in our ſaid Charters contained; and when we had conceived firm and undoubted hopes, that theſe our Liberties would have been faithfully preſerved by all men, the King circumvented and ſeduced by the councils of evil Miniſters, hath not been afraid to violate it by infringing them, falſly believing that he could for Rewards be abſolved from that offence, which would be the manifeſt deſtruction of the Kingdom.*

There is another thing alſo that grieves our Spirits that the Juſtices ſubtilly and miliciouſly, by diverſe Arguments of covetouſneſs and intollerable Pride, have the King againſt his faithful Subjects ſundry ways incited and

caverunt & incitaverunt, ſanoque & ſalubri conſilio Ligeorum Angliæ contrarium reddideruut, conſilia ſua vana impudenter præponere & affirmare non erubuerunt ſeu formidaverunt, ac ſi plus habiles eſſent ad conſulendam & conſervandam Rempublicam quam tota Univerſitas Regni in unum collecta. Ita de illis poſſit vere dici, viri qui turbaverunt terram & concuſſerunt Regnum ſub fuco gravitatis totum populum graviter oppreſſerunt, prætextuq; ſolummodo exponendi veteres Leges, novas (non dicam Leges) ſed malas conſuetudines introduxerunt & vomuerunt, ita quod per ignorantiam nonnullorum ac per partialitatem aliorum qui vel per munera vel timorem aliquorum potentum innodati fuerunt, nulla fuit ſtabilitas Legum nec alicui de populo Juſtitiam dignabantur exhibere, opera eorum ſunt opera nequitiæ, & opus iniquitatis in manibus, pedes eorum ad malum currunt & feſtinant, ac viam recti neſcierunt. Quid dicam? non eſt judicium in greſſibus ſuis.

Quam

provok'd, counselling him contrary to the good and wholsome Advice of all the Liegemen of England, *and have not bluſh'd nor been afraid, impudently to aſſert and* prefer their own fooliſh Councils, as if they were more fit to conſult and preſerve the Commonweal, than all the Eſtates of the Kingdom together aſſembled, *ſo that it may be truly ſaid of them, they are the men that troubled the Land, and diſturb'd the Nation under a falſe colour of gravity, have the whole People grievouſly oppreſt, and under pretence of expounding the antient Laws, have introduced new (I will not ſay Laws, but) evil Cuſtoms, ſo that through the Ignorance of ſome, & partiality of others, who for reward or fear of great Men have been engaged, there was no certainty of* Law, *and they ſcorned to adminiſter juſtice to the people, their deeds are deeds of wickedneſs, & the work of Iniquity is in their hand, their feet make haſt to evil, & the way of truth have they not known; what ſhall I ſay? there is no Judgment in their paths.*

Quam plurimi liberi homines terræ noſtræ fideles Domini Regis quaſi viles ultimæ ſervi conditionis diverſis Carceribus ſine culpa commiſerunt, ibidem carcerandi quorum nonnulli in carcere fame, mærore & vinculorum pondere defecerunt, extorquerunt pro Arbitrio inſuper infinitam pecuniam ab eiſdem pro redemptione ſua, crumenas aliorum ut ſuas impregnarent tam à divitibus quam pauperibus exhauſerunt, ratione quorum incurrierunt odium inexorabile & formidabiles Imprecationes omnium quaſi tale incommunicabile privilegium *per Chartam deteſtabilem* de non Obſtante obtinuerunt et perquiſiverunt ut à lege divina humanaque quaſi ad libitum immunes eſſent.

Gravamen inſuper ſolitum adhuc ſive aliquo modo ſævit, omnia ſunt venalia ſi non quaſi furtiva, ptoh dolor.

——— Quid non mortalia pectora cogit
Auri ſacra fames? ———

Ex ore meo contra vos O Impii tremebunda cœli decreta jam auditis. Agmitio vultuum veſtrorum accuſat vos, & peccatum veſtrum quaſi Sodoma prædicaviſtis nec abſcondiſtis, væ animæ veſtræ, væ qui condunt leges & ſcribentes injuſtitiam ſcripſerunt, ut opprimerent in judicio pauperes, & vim facerent cauſæ humilium populi, ut eſſent viduæ præda eorum, & pupillos diriperent, væ qui ædificant domum ſuam injuſtitia & cœnacula ſua non in Judicio, væ qui concupiverunt

agros

How many Free-men of this Land faithful Subjects of our Lord the King, have like the meanest slaves of lowest condition without any fault been cast into Prison, where some of them by hunger, grief, or the burthen of their chains have expired, they have also extorted at their pleasure infinite sums of mony for their ransoms; the Coffers of some, that they might fill their own, as well from the rich as the poor they have exhausted, by reason whereof they have contracted the irreconcilable hatred & dreadful imprecations of all men, as if they had purchas'd and obtain'd such an incommunicable priviledge, by their detestable Charter of nonObstante, *that they might at their own last be free from all Laws both humane and divine.*

Moreover there is another more, the ordinary grievance, which hitherto hath, and in some measure doth still rage among us: All things are expos'd to Sale, if not as it were to plunder and Theft. Alas! how great power hath the love of mony in the breasts of Men! Hear therefore O ye wicked, from my mouth the dreadful decree of Heaven; the dejection of your countenances accuseth you, and like the men of Sodom, *ye have not hidden but proclaim'd the sin; Woe be to your souls, woe be to them that make Laws, and Writing, write injustice, that they may oppress the poor in Judgment, and injure the cause of the humble, that Widows may become their Prey, and that they might destroy the* Orphan. *Woe be to those that*

build

agros & violenter tulerunt & rapuerunt domos & oppreſſerunt virum & domum ejus imo virum & Hæreditatem ſuam, væ Judices qui ſicut Lupi veſpere non relinquebant oſſa in mane; Juſtus Judex adducit Conſiliarios in ſtultum finem & Judices in ſtuporem, mox alta voce juſtum Judicium terræ recipietis.

Vide Mat. Weſt. Anno 1289. p. 376. li. 13.

His auditis omnium aures tinniebant totaque Communitas ingemuerunt, dicentes heu nobis, heu, ubi eſt Angliæ toties empta, toties conceſſa, toties ſcripta, toties jurata Libertas?

Anno vero 1290. (18. Ed. I.) deprehenſis omnibus Angliæ Juſticiariis de repetundis (præter Jo. Metingham, & Eliam de Blecking'ham quos honoris ergo nominatos volui) judicio Parliamenti vindicatum eſt in alios, atque alios carcere, exilio, fortunarumque omnium diſpendio, in ſingulos multa gravisſima & amiſſione officii. Spelmans Gloſſary, p. 1. co. 1. 416.

Alii de Criminalibus ſeſe à viſibus populi ſubtrahentes in locis ſecretis cum amicis tacite latitaverunt, alios protulerunt in medium unde merito fere omnes ab officiis depoſiti & amoti, unus à terra exulatus alii perpetuis priſonis incarcerati, alii que gravibus pecuniarum ſolutionibus juſte adjudicati fuerunt.

build their Houſes in injuſtice, and their Tabernacles in Unrighteouſneſs: Woe be to them that covet large poſſeſſions, that break open Houſes and deſtroy the Man and his Inheritance; Woe be to ſuch Judges who are like Wolves in the Evening, and leave not a bone till the morning. The Righteous Judge will bring ſuch Counſellors to a fooliſh end, and ſuch Judges to confuſion: ye ſhall all preſently with a loud cry, receive the juſt ſentence of the Land.

At the hearing of theſe things all Ears tingled, and the whole Community lifted up their Voice, and mourned, ſaying, Alas, alas for us! what is become of that Engliſh Liberty *which we have ſo often purchaſed, which by ſo many Conceſſions ſo many Statutes, ſo many* Oaths *hath been confirmed to us.*

Hereupon ſeveral of the Criminals withdrew into ſecret places, being concealed by their friends; ſome of them were brought forth into the midſt of the People, and deſervedly turned out of their Offices; one was baniſhed the Land, and others were grievouſly Fined, or Condemned to perpetual Impriſonment.

This is confirmed by Spelman An. 1290. *All the Justices of* England, *saith he, were* An. 18. Ed. 1. *apprehended for Corruption, except* John Mettingham, *and* Elias Bleckingham, *whom I name for their honour, and by Judgment of Parliament condemned, some to Imprisonment, others Banishment, or Confiscation of their Estates, and none escaped without grievous Fines, and the loss of their Offices.*

FINIS.